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Supreme Court, U.S.
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No. 01-521

In The

Supreme Court of the United States

REPUBLICAN PARTY OF MINNESOTA, et al.,

Petitioners,

v.

VERNA KELLY, et al.,

Respondents.

On Writ Of Certiorari To The United States Court Of Appeals For The Eighth Circuit

JOINT APPENDIX VOLUME II, PAGES 245 TO 385

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Petition For Certiorari Filed September 24, 2001
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UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA
THIRD DIVISION

REPUBLICAN PARTY OF MINNESOTA, et al.,

Plaintiffs,

vs.

VERNA KELLY, in her official capacity as Chairperson of the Minnesota Board of Judicial Standards, or her successor; CHARLES E. LUNDBERG, in his capacity as Chair of the Minnesota Lawyers Professional Responsibility Board, or his successor; and EDWARD J. CLEARY, in his capacity as Director of the Minnesota Office of Lawyers Professional Responsibility, or his successor,

Defendants.

Civ. No. 98-831 (MJD)

AFFIDAVIT OF ARNE H. CARLSON

STATE OF MINNESOTA)
) ss.
COUNTY OF RAMSEY)

I, Arne H. Carlson, being first duly sworn, depose and say:

1. I am the Governor of the State of Minnesota. My term expires January 4, 1999. As Governor, I have made numerous appointments to unfilled judicial terms. I have appointed six justices to Supreme Court vacancies, eight

judges to Court of Appeals, vacancies, and 93 judges to District Court vacancies.

2. I am a Republican and support the election of Republicans to the legislative and executive branches of government. However, I do not believe that judicial selection should be conducted in a partisan manner.

3. Under the Minnesota system, candidates for judicial vacancies are processed by the Judicial Selection Commission. Minn. Stat. § 480B.01. There are a total of 49 members of the Commission. The Commission has nine at-large members, seven of whom are appointed by the Governor and two by the Supreme Court, and 40 district members, four from each of the ten state judicial districts. For each district, two members are appointed by the governor and two by the Supreme Court. When there is a judicial vacancy in a particular district, 13 members of the Commission convene: the nine at-large members plus the four members from that district. The Commission solicits applications, obtains input from the local community, interviews candidates, and submits the names of three to five nominees to the Governor.

4. During the application and selection process, judicial candidates are not asked to state their political affiliation. It is reasonable to state that I have appointed a significant number of Democrats, Republicans, Independents, and apolitical applicants to judicial positions. I believe that the judges who have been appointed through this process possess the qualifications the citizens of this State want in their judges: "integrity, maturity, health if

job related, judicial temperament, diligence, legal knowledge, ability and experience, and community service." Minn. Stat. § 480B.01, subd. 8.

5. I do not believe there is any other state that has a judicial selection and retention process that is more efficient, more fair, or produces better judges than Minnesota. When Sandy Keith retired as chief justice, his departure was regretted by citizens across our State and across party lines – as was the case when Douglas Amdahl left, and Robert Sheran before him. These people would not have made it through a partisan selection process. The judiciary in Minnesota is exceptionally qualified and has the respect of the citizens of Minnesota. Many of the judges I appointed, who were the best qualified candidates available, did not have the political contacts, financial backing, or personal inclination to engage in partisan campaigns. In a partisan process, we would lose candidates such as these. The selection of candidates is already limited due to salary. We should not erect additional barriers. In Minnesota, we should be trying to preserve the system we have.

6. As a result of my many years in the political arena, I believe I have a good understanding of how citizens think and feel. When citizens find themselves in court, they do not want to appear before judges who are pre-committed to particular positions. The judicial selection and retention process should not mirror the legislative process. Legislative candidates are expected to commit themselves to positions. But that is not what citizens expect from judges. For the public to read newspaper headlines that a political party has endorsed and will work to elect a particular candidate would greatly

harm the public's confidence in the independence of the judiciary.

/s/ Arne H. Carlson
ARNE H. CARLSON

Subscribed and sworn to before me this
30th day of December, 1998.

/s/ Thomas Vasaly
Notary Public
My commission expires: 1/31/2000

[SEAL] THOMAS C. VASALY
NOTARY PUBLIC – MINNESOTA
RAMSEY COUNTY
MY COMMISSION
EXPIRES JANUARY 31, 2000

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA
THIRD DIVISION

REPUBLICAN PARTY OF MINNESOTA, et al.,

Plaintiffs,

vs.

CHARLES FLINN, JR., in his capacity as Chairperson of the Minnesota Board of Judicial Standards, or his successor, et al.,

Defendants.

Civ. No. 98-831 (MJD)

SUPPLEMENTAL AFFIDAVIT OF EDWARD J. CLEARY

STATE OF MINNESOTA)
) ss.
COUNTY OF RAMSEY)

I, Edward J. Cleary, being first duly sworn, depose and say:

1. I am the Director of the Office of Lawyers Professional Responsibility and have been since July 1997.

2. I am responding to Mr. Wersal's recent claim that "if Mr. Wersal has an ethical complaint pending against him. OLPR could be holding it until the outcome of this case." 2/22/99 Wersal Mem. in Opp. to OLPR's Motion at 4; *see similarly* 2/22/99 RPM Mem. at 20 (referring to a "meritless complaint" that Plaintiffs claim was submitted to my office by an anonymous RPM member in 1998). As Mr. Wersal should know, there are no pending ethics complaints against him in my office, and we are not

"holding" any complaints against him. *See* Wersal Depo. at 4-8 (Defendants' Ex. 15). When my office receives a complaint, we initially determine whether the complaint should be summarily dismissed or investigated. The complainant and the respondent lawyer are simultaneously notified of this initial determination, usually within three weeks after we receive the complaint. The notification to the respondent lawyer includes a copy of the complaint. Complaints are not public information. See Rule 20, Minnesota Rules on Lawyers Professional Responsibility.

3. Following consultation with my attorney, I determined not to provide an advisory opinion to Mr. Wersal in response to his March 27, 1998, letter. The reason I did not provide an advisory opinion, as I stated in my March 31, 1998, response to Mr. Wersal (1/29/99 Wersal Dec., Ex. 13), was that Mr. Wersal's request concerned Canon 5, he had sued the Lawyers Board over the constitutionality of Canon 5, and the litigation was still pending. It is not mandatory for my office to issue an advisory opinion upon request of an attorney.

4. I am also responding to the February 15, 1999, declaration of Michael S. Paulsen. I am not aware of any involvement by Mr. Paulsen with the Minnesota Lawyers Professional Responsibility Board. Specifically, I am not aware that he has represented attorneys before the Lawyers Professional Responsibility Board, served as a member of the Lawyers Professional Responsibility Board, or participated on the Minnesota Bar Association Rules of Professional Conduct Committee.

5. I have reviewed the materials cited by Mr. Paulsen in paragraph 2 of his declaration. I have also

reviewed Mr. Mohrman's June 18, 1998, letter to Bill Cooper stating that Mr. Wersal was not seeking and would not accept endorsement (1/25/99 Cooper Dec., Ex. M), the newspaper articles containing similar statements (1/27/99 Currell Aff., Exs. 6 and 7), paragraph 12 of Mr. Wersal's January 27, 1999, declaration herein that he asked his supporters not to act on his behalf or seek endorsement for him, and Mr. Wersal's January 25, 1999, deposition. Based upon my review of these materials, Mr. Paulsen's statement that Mr. Wersal's supporters' actions exposed him to disciplinary action by my office (*see* Paulsen Dec., para. 4) is incorrect. Based upon the evidence presented, complaints concerning the matter would be dismissed.

6. Mr. Paulsen states that "the mere occurrence of advocacy of such nature on [a candidate's] behalf likely could give rise to a disciplinary action, even if he did take aggressive steps to try to dissuade persons from engaging in such conduct." Paulsen Dec., para. 5. This statement is wholly incorrect. A candidate is responsible under Canon 5 only if he or she "authorizes or knowingly permits" the supporter to act.

7. I am not aware that there has been any significant problem in Minnesota with judicial candidates seeking endorsement by special interest groups. The sole instance of which I am aware was the subject of an ethics complaint filed against a judicial candidate in 1994. In order to seek endorsement by a special interest group, the judicial candidate was required to sign a statement committing himself to certain positions of the group. As indicated in Kenneth L. Jorgensen's January 27, 1999,

affidavit herein, the complaint was dismissed due to concern over the constitutionality of the announce clause of Canon 5.

/s/ Edward J. Cleary
EDWARD J. CLEARY

Subscribed and sworn to before me this
4th day of March, 1999.

/s/ Joanne E. Daubenspeck
Notary Public

[SEAL] JOANNE E. DAUBENSPECK
NOTARY PUBLIC – MINNESOTA
RAMSEY COUNTY
My Comm. Expires Jan. 31, 2000

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA
THIRD DIVISION

REPUBLICAN PARTY OF MINNESOTA, an associations; INDIAN ASIAN AMERICAN REPUBLICANS OF MINNESOTA, an association; REPUBLICAN SENIORS, an association, YOUNG REPUBLICAN LEAGUE OF MINNESOTA, a Minnesota nonprofit corporation, MINNESOTA COLLEGE REPUBLICANS, an association; GREGORY F. WERSAL, individually; CHERYL L. WERSAL, individually; MARK E. WERSAL, individually; CORWIN C. HULBERT, individually; CAMPAIGN FOR JUSTICE, an association; MINNESOTA AFRICAN AMERICAN REPUBLICAN COUNSEL, an association; MUSLIM REPUBLICANS, an association; MICHAEL MAXIM, individually; and KEVIN J. KOLOSKY, individually,

Plaintiffs,

vs.

Case No.
98-831(MJD)

DECLARATION OF MICHAEL C. DEMOSS

VERNA KELLY, in her capacity as Chairperson of the Minnesota Board of Judicial Standards, or her successor; CHARLES E. LUNDBERG, in his capacity as Chair of the Minnesota Lawyers Professional Responsibility Board, or his successor; and EDWARD J. CLEARY, in his capacity as Director of the Minnesota Office of Lawyers Professional Responsibility, or his successor,

Defendants.

MICHAEL C. DEMOSS, states as follows:

1. I am an attorney licensed to practice law in Minnesota, co-founder of Hamline Law School, in St. Paul, Minnesota, and a former Dean and Professor of legal ethics at the Garza Law School in Edinburg, Texas.

2. In 1992, I ran for the office of Chief Justice of the State of Minnesota.

3. In the course of my campaign, I stated "the unborn child is a human being, has constitutional rights, and the State of Minnesota needs to protect those rights."

4. The *Minneapolis Star Tribune* newspaper reported my views in an article on August 26, 1992.

5. As a result, the Minnesota Board on Judicial Standards filed an ethical complaint against me with the Lawyers Professional Responsibility Board alleging I had violated the Code of Ethical Judicial conduct by announcing my views on disputed legal and political

issues. A copy of the Complaint which was directed to Thomas Vasaly of the Lawyers Professional Responsibility board is attached as Exhibit A and is incorporated herein by reference.

6. As a result of making statements I believed to be within my rights to free speech protected by the First Amendment, I was labeled as "unethical" by the largest newspaper in Minnesota. My campaign for the Minnesota Supreme Court was damaged by this adverse publicity.

7. I fought the ethical complaint arguing that the rule prohibiting judicial candidates from announcing their views on disputed legal and political issues violated the First Amendment and notion of free elections in which the voters are to make an informed decision on who shall serve them as judges.

8. On August 3, 1993, the Director of the Office of Lawyers Professional Responsibility issued a determination that discipline is not warranted. A copy of this determination and its supporting memorandum is attached as Exhibit B and is incorporated herein by reference. In the memorandum, the director notes that the constitutionality of similarly or identically worded provisions had been challenged successfully in other jurisdictions and that since 1990 the American Bar Association had recommended that the Canons be changed to be more narrow in the impact on free speech. The director concludes "As a matter of prosecutorial discretion, the director has determined not to seek discipline in this case." The Board on Judicial Standards, which had filed the ethical complaint against me, had a right to appeal the director's decision, but they did not appeal.

9. As a former candidate for a judicial office, I believe that the rule prohibiting candidates from announcing their views on disputed legal and political issues has a profound chilling effect on free speech. Almost anything can be considered a "legal or political" issue. The rule is so broad that a candidate can hardly know what may or may not be a violation of the rule. And because the potential consequence of putting one's license to practice law in jeopardy is so severe, the rule prohibits candidates from speech far beyond what might be necessary to protect the impartiality of a judicial candidate.

10. The impact of the rule on free speech continues to this day. Just because the director of the Office of Lawyers Professional Responsibility chooses not to pursue discipline against me as a matter of prosecutorial discretion, does not mean that they won't pursue discipline in some future case against myself or another attorney running for a judicial office. In addition, the next candidate for judicial office would have to face the possibility that the Board on Judicial Standards may appeal a future decision of the Office of Lawyers Professional Responsibility to not discipline a lawyer who announces his views on what the Board on Judicial Standards believes is a legal or political issue. As long as the Code of Judicial Conduct contains language prohibiting candidates from announcing their views on legal or political issues, attorneys will fear discipline to exercise their free speech.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on: January 25, 1999

/s/ Michael C. DeMoss
MICHAEL C. DEMOSS

EXHIBIT A

MINNESOTA BOARD ON JUDICIAL STANDARDS

[Names And Addresses Omitted In Printing]

August 31, 1992

Thomas Vasaly
Lawyers Professional Responsibility Board
1st Floor
520 Lafayette Road
St. Paul, MN. 55155

Dear Mr. Vasaly:

On Friday, August 28, 1992, the Board on Judicial Standards reviewed the statements of Michael DeMoss as published in the August 26, 1992 Star Tribune. Ms. Halverson has confirmed the statements were based on a interview she had with Mr. DeMoss. As you know, Michael DeMoss is a candidate for Chief Justice of the Minnesota Supreme Court.

This Board does not have jurisdiction over a lawyer's conduct when a candidate for a judicial position and thus, is unable to initiate an investigation or impose discipline, if appropriate. The Board recognizes the Lawyers Professional Responsibility Board's authority, under Rule 8.2(b) of the Minnesota Rules of Professional Conduct, to address a complaint of lawyer conduct under these circumstances.

We request your Board to investigate Michael DeMoss' statements for a possible violation of Canon 7B(1)(c) or any other violations of the Code of Judicial Conduct.

Very truly yours,

/s/ DePaul Willette
DePaul Willette
Executive Secretary

DW:df

Star Tribune

Wednesday
August 26/1992
Read then recycle

High court candidate sparks ethical debate

DeMoss takes strong stand on abortion

92/CAMPAIGN

By Donna Halverson
Staff Writer

By running for the Minnesota Supreme Court as an avowed opponent of abortion, Minneapolis attorney Michael DeMoss is putting Minnesota's judicial election system to the test.

The question posed by DeMoss' candidacy is this: Is it proper for a lawyer to run for a judgeship espousing a position on any social or political issue?

Chief Justice. A.M. (Sandy) Keith, whom DeMoss is challenging, says the answer is no. He says DeMoss is violating the Code of Judicial Standards by speaking out on abortion.

It is an unusual issue in an unusual election campaign. State court judges are required to run for reelection every six years, but they rarely have opponents. Keith will square off against two in the Sept. 15 primary: DeMoss and Ross Phelps, an assistant public defender in Houston County.

While judicial campaigns are usually low-key affairs, DeMoss is taking a firm stand on one of the most emotional issues of the day. What's more, he's running for a spot on the state's highest court, which is likely to have to rule on the issue.

The state's Code of Judicial Conduct says a judicial candidate should not "announce his views on disputed legal or political issues." That canon traditionally has limited campaign rhetoric to suggestions for improving the court system.

Keith said judges need to keep open minds in order to decide cases based on the facts. "It's hard to know how you're going to decide an issue until you really have to deal with the facts and the law that exist at any given time," he said. If a judge has a firm position on an issue, "I'm not sure you could judge it fairly," he said.

DeMoss points to another section of the Judicial Code and says he's allowed to speak out "on behalf of measures to improve the law, the legal system, judicial administration, or the administration of justice."

Although abortion is not his only issue – he's interested in improving training for judges, for example – it's clearly a key area of the law where he would like to see changes. He calls Roe vs. Wade, the 1973 U.S. Supreme Court opinion that legalized abortion, "a horrible fraud."

"Our Constitution must protect the unborn child's life because that constitutional right to life is inalienable," he said. "We didn't make up this right to life. It was endowed upon us by our creator." . . . So if it's given by God, only God can take it away. We can't legislate it away. We can't take it away as judges. And therefore, the unborn child has constitutional rights to life and due process and equal protection under the law."

A member of Minnesota Lawyers for Life, DeMoss said he arrived at his strong position as a result of seeing aborted fetuses and talking to doctors as a medical malpractice lawyer.

"I wouldn't want to go to the point of deciding cases before I've even had them before me," he said. "I think that it would be wrong for me to say I've decided that in the case of Smith versus Jones that it's going to be decided this way. You have to get all those facts. I can only tell you that I believe that an unborn child has constitutional rights."

Len Biernat teaches professional responsibility as Hamlin University School of Law. He said DeMoss appears to be violating the Judicial Code in two respects. "I think he does announce his preconceived notion of how he would decide a case," he said. "I think also the language (of the code) is such that he should not be making comments on issues that are politically in controversy. (Abortion) is one

that is more a political controversy than a legal controversy."

It's also an issue that, as a result of U.S. Supreme Court opinions following Roe vs. Wade, is increasingly being left to the states.

Abortion is "a hot issue, and you know that the Supreme Court in this and many other states are going to have to face it directly," said Richard Oakes, who also teaches law at Hamline. "Minnesota may not be the first state to pass a law that results in a court challenge but I think we're going to be one of them. It's on the horizon."

Meanwhile, Ross Phelps, the third candidate in the race, is steering clear of the issue. Phelps says he wouldn't state his position on abortion if asked. "I think ethically we're prohibited from doing that," he said.

Kevin Johnson, an assistant Hennepin County attorney who's running for another seat on the Supreme Court, also believes it's a violation of lawyers' ethical rules for DeMoss to speak out on abortion as a judicial candidate. "I think somebody could, and maybe should, file a complaint against him with the lawyers' board for violating the rules of professional responsibility," he said.

But DeMoss, one of the founders of the Hamline law school, is adamant on his right to speak out. "There's a constitutional right to speech," he said. "I wouldn't like to think that when I run for judge, I would lose that, or that anyone would hide behind the (judicial code) to keep the truth from coming out."

Johnson said some lawyers believe their First Amendment rights are violated by restrictions on what they can

say, but he believes judges need freedom to decide cases without worrying about being criticized by future election opponents. "Otherwise, what you'd find is people running against some judge who took a controversial but correct legal position," he said.

EXHIBIT B

In the Matter of the Complaint of MINN. BOARD ON JUDICIAL STANDARDS Attn: DePaul Willette 2025 Centre Ponte Boulevard Suite 420 Mendota Heights, MN 55120 against MICHAEL, C. DEMOSS, an Attorney at Law of the State of Minnesota.	**DETERMINATION THAT DISCIPLINE IS NOT WARRANTED**

TO: Complainant and James P. Larkin, Attorney for the Respondent Named Above:

Based upon the entire file the Director of the Office of Lawyers Professional Responsibility hereby determines that discipline is not warranted pursuant to Rule 8(d)(1), Rules on Lawyers Professional Responsibility. The attached memorandum states the basis for this decision.

NOTICE OF COMPLAINANT'S RIGHT TO APPEAL

If the complainant is not satisfied with this decision, an appeal may be made by notifying the Director in a

letter postmarked no later than fourteen (14) days after the date of this notice. The letter of appeal should state the reason(s) why the complainant disagrees with the decision. An appealed decision will be reviewed by a designated Lawyers Professional Responsibility Board member, whose options are limited to (1) approving this decision; (2) requiring further investigation; or (3) if it appears that public discipline is warranted, directing that the case be submitted to a hearing panel. This determination will generally be based upon the information which is already contained in the file.

Dated: August 30, 1993.

/s/ Marcia A. Johnson
MARCIA A. JOHNSON
DIRECTOR OF THE OFFICE OF LAWYERS PROFESSIONAL RESPONSIBILITY
520 Lafayette Road, Suite 100
St. Paul, MN 55155-4196
(612) 296-3952

MEMORANDUM

In 1992, while a candidate for the position of the chief justice of the Minnesota Supreme Court, respondent stated to the news media that *Roe v. Wade* is a "horrible fraud," that "[w]e can't take [the right to life] away as judges," and that "the unborn child has constitutional rights to life and due process and equal protection under the law." Respondent also stated: "I think that it would be wrong for me to say I've decided that in the case of *Smith v. Jones* that it's going to be decided this way. you have to

get all those facts." During the campaign, respondent stated his position on abortion to the news media on several occasions. At that time, respondent was aware of the provisions of the Judicial Code concerning campaign conduct.

Rule 8.2(b), Minnesota Rules of Professional Conduct, provides: "A lawyer who is a candidate for judicial office shall comply with the applicable provisions of the Code of Judicial Conduct." Canon 7B(1)(c) of the Code of Judicial Conduct provides that a candidate for judicial office should not "announce his or her views on disputed legal or political issues. . . . "

It seems apparent that respondent violated Canon 7B(1)(c). However, the constitutionality of similarly or identically worded provisions has been challenged in other jurisdictions, in some cases successfully. *See e.g., Buckley v. Illinois Judicial Inquiry Board,* Nos. 92-3279, 92-3283, and 92-3291 (7th Cir. June 10, 1993). Since 1990, the American Bar Association has recommended that Canon 7B(1)(c) be worded more narrowly.

As a matter of prosecutorial discretion, the Director has determined not to seek discipline in this case. The Director has weighed factors such as the harm or lack of harm caused by respondent's conduct, the resources required to defend against a constitutional challenge to Canon 7B(1)(c), the probability that the canon ultimately will be upheld, the likelihood that prosecuting respondent would result in discipline, and if so, the discipline likely to be imposed. Upon consideration of these factors, the Director has determined that it would not be a good use of the

limited resources available to her Office to seek discipline in this particular case.

M.A.J.

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA
THIRD DIVISION

REPUBLICAN PARTY OF MINNESOTA, et al.,

Plaintiffs,

vs.

VERNA KELLY, in her capacity as Chairperson of the Minnesota Board of Judicial Standards, or her successor, et al.,

Defendants.

Civ. No. 98-831(MJD)

AFFIDAVIT OF A.M. (SANDY) KEITH

STATE OF MINNESOTA)
) ss.
COUNTY OF OLMSTED)

I, A.M. (Sandy) Keith, being first duly sworn, depose and say:

1. That I was duly admitted to the practice of law in Minnesota in 1956 and presently reside at 5225 Meadow Crossing Road Southwest, Rochester, Minnesota. Since returning to Minnesota in 1955, I have been deeply involved in the political process of this state. I was elected to the Minnesota Senate as a representative of Olmsted County in 1958 and served in that position through 1962. I was elected Lieutenant Governor of Minnesota in November of 1962 and served in that position through 1966. In 1966, I was endorsed by the Democratic Farmer Labor Party for Governor and

ran and was defeated in the Primary in September of 1966. Following my defeat and after serving out my term as Lieutenant Governor, I engaged in the full time private practice of law in Rochester, Minnesota until I was appointed to the Governor Rudy Perpich on February 1, 1989. In November of 1990, I ran without opposition and was elected as an Associate Justice of the Minnesota Supreme Court. I was appointed Chief Justice of the Minnesota Supreme Court on November 30, 1990 and ran and was elected to that office in November 1992. I had two opponents. I served as Chief Justice until I retired on January 29, 1998. I have since returned to the private practice of law at my former law firm.

2. When I ran for the State Legislature, Lieutenant Governor, and Governor of this state I sought the support of the Democratic Farmer Labor Party and many other special interest groups. I understood I was running for these offices to make changes to laws and policies. I supported a political campaign platform. I often had constituents ask me for specific help with specific problems that involved state government, and I would try to help. I was fully aware that constituents would be watching my votes, both in the legislature and as a spokesperson for the executive branch, and that my votes and views would effect their votes in the next election.

3. Upon taking the bench in February of 1989, I learned very quickly that my job was to apply the law impartially to everyone that came before this court whether that person was a Democrat or Republican, Catholic, Protestant, Jew or atheist; whether that person was pro life or pro choice, pro labor or anti labor, pro public schools or pro

parochial schools, etc. I had a duty to apply the facts of each case to existing law if the law met the state and federal constitutional requirements.

4. My experiences running for judicial office were fundamentally different from my experiences running for partisan political offices. Before taking the bench, I realized it was important to sever all political ties to the Democratic Farm Labor Party. There is no other way I could have performed my job on the Minnesota Supreme Court and still retain in the minds of the public that this institution was, in fact, fair, objective, and impartial.

5. Minnesota has a long history of non-partisan judicial elections [since 1912]. Most judicial appointees in Minnesota never held elected office before they were appointed. The prospect of facing a contested election, even under the present non-partisan system in Minnesota, is daunting to most judges. Minnesota has an excellent reputation for the independence and high caliber of its judges. If the system in Minnesota were changed to permit partisan campaign activities, I believe many qualified judges and potential judges would opt not to participate; and, those who did participate would be under pressure to say and do things that would appeal to financial contributors, members of political parties, and voters generally. As a result, the independence and quality of our judiciary, I believe, would be put at risk.

6. Permitting judicial candidates to personally solicit campaign contributions, seek political party endorsement, and engage in the other campaign activities presently prohibited by Canon 5 of the Minnesota Judicial Code would, in time, damage the public's confidence in the judiciary

and put pressure on judges to decide cases in ways that would impress the judge's supporters favorably.

7. I served on the Minnesota Supreme Court when the Court considered and approved amendments to Canon 5. However, in making this affidavit, I am not expressing the Court's views or my own consideration of any matters before me when I served on the Court, but rather I am expressing my own view at this time as a private citizen.

Dated January 29, 1999 /s/ A.M. Sandy Keith
A.M. (Sandy) Keith

Subscribed and sworn to before me this
29th day of January, 1999.

/s/ [Illegible]
Notary Public
My Commission Expires: [Illegible]

[SEAL] [Illegible]
Notary Public – Minnesota
MY COMMISSION EXPIRES [Illegible]

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA
THIRD DIVISION

Republican Party of Minnesota, et al.,

Plaintiffs,

vs.

Charles A. Flinn, Jr. in his capacity as Chairperson of the Minnesota Board of Judicial Standards, et al.,

Defendants.

Court File No. 98-831 (MJD)

AFFIDAVIT OF MARK B. LEVINGER

STATE OF MINNESOTA)
) ss.
COUNTY OF RAMSEY)

I, MARK B. LEVINGER, being first duly sworn, hereby depose as follows:

1. Attached hereto as exhibits are true and correct copies of articles obtained from the Internet and other sources:

A. Exhibit 1 is *North Carolina Bar Association Position Paper – Selection v. Election* (1990);

B. Exhibit 2 is the pertinent portion of the Code of Conduct for Judicial Employees;

C. Exhibit 3 is the pertinent portion of the Code of Conduct for United States judges;

D. Exhibit 4 is the *North Carolina Bar Association Position Paper:* Appointment of Judges Protects Our Just System (1998);

E. Exhibit 5 is *The League of Women Voters of Pennsylvania Position Papers:* Where We Stand On Judicial Selection;

F. Exhibit 6 is *The Amarillo Globe-News:* Partisanship;

G. Exhibit 7 is *The Dallas Morning News:* "Judicial Reform" (Nov. 26, 1998);

2. Enclosed as Exhibit 8 is a list of 28 Minnesota Statutes which contain the phrase "knowingly permit."

3. Enclosed as Exhibit 9 is a list of two Minnesota Statutes that contain the phrase "knowingly permitted."

4. Enclosed as Exhibit 10 is a list of six Federal Statutes containing the phrase "knowingly permit."

FURTHER AFFIANT SAYETH NOT.

/s/ Mark B. Levinger
MARK B. LEVINGER

Subscribed and sworn to before me on
this 22 day of February, 1999.

/s/ Linda A. Ratay
NOTARY PUBLIC

[SEAL] LINDA A. RATAY
NOTARY PUBLIC – MINNESOTA
WASHINGTON COUNTY
MY COMMISSION EXPIRES JANUARY 31, 2000

EXHIBIT I

SELECTION vs. ELECTION

Position Paper: North Carolina Bar Association, 1990

The state of North Carolina is in the process of partisan judicial elections. The underlying premise of partisan elections is that different parties stand for different positions. This premise is valid for legislative and executive offices. Judicial offices are different. An essential characteristic of a good judge, indeed a requirement of the Judicial Code, is the ability to put aside personal preferences and handle matters impartially, based on the laws of this state and the facts of the particular case being heard.

As a strong two-party system continues to develop in this state, we face the spectacle of increasing political rhetoric in the elections of judges. This rhetoric demeans and distorts the public perception of and public confidence in the system of justice in the state by suggesting that cases are, and presumable should be, based upon a judge's person or political philosophy rather than the law and the facts of the particular case.

When judicial candidates raise money and when special interest groups contribute to their campaigns, the perception is that justice is for sale.

These perceptions represent a distortion of reality, and are demeaning to the judicial system of this state, to its judges, and to the legal profession.

The system of justice we enjoy is envied and emulated by others throughout the world because matters are decided based upon laws administered impartially, and facts found by juries or judges without regard to personal or political philosophy.

Members of the legal profession for the most part represent clients with varied interests and are concerned primarily with obtaining judges with the highest legal ability and discernment.

Thus, the North Carolina Bar Association has strongly advocated for a number of years and continues to advocate changing the process of choosing judges by partisan political elections, as now provided in the North Carolina Constitution. Despite the efforts of the Bar Association, the people of North Carolina have not been afforded the opportunity to vote on this issue in the form of a constitutional amendment. The Bar Association has therefore participated with other organizations to form the North Carolina Committee on Judicial Campaigns. This committee has, among other activities, published a voter information guide setting forth the qualifications and background of each of the judicial candidates.

The Bar Association urges the voting public to give primary consideration to the training, qualifications and experience of the candidates, rather than party affiliation. The Bar Association urges both political parties to utilize restraining in connection with the ongoing election of judges. Finally, the Bar Association urges the 1991 General Assembly to authorize a referendum proposing judicial selection reform.

APPOINTMENT OF JUDGES PROTECTS OUR JUSTICE SYSTEM

Position Paper: North Carolina Bar Association, 1998

The North Carolina Bar Association has long supported merit selection of judges and applauds the Commission for the Future of Justice and the Courts ("Medlin Commission") for its recommendations in this regard. The electoral system as it now exists with partisan elections threatens the stability, experience, dignity and impartiality of the bench.

- The public has no confidence in the fairness of decisions when judges raise large sums in campaign funds from lawyers and other interest groups.
- Fund raising gives the appearance that justice can be bought for a price.
- Many lawyers who would make excellent judges will not consider the office because of the political demands of an election.
- Justice should not be partisan issue. While a move to non-partisan elections would solve some problems, the true solution is appointment.
- Campaign rhetoric demeans the bench and erodes the public's respect for the courts.
- Election campaigns can cause judges to publicly take positions on issues which might come before them. How can a citizen appearing before such a judge believe he or she will get a fair trial on that issue?

- As the Medlin Commission survey showed, most voters do not even know judges are elected, much less the identity of the judicial candidates are on the ballot.
- Merit selection with a retention election by the voters ("yes" or "no" as to whether the judge should remain on the bench) ensures accountability to the public.
- Retention elections avoid the criticisms encountered by the federal system of nomination/confirmation with lifetime tenure. The judges must be retained every eight years by the voters.

We urge you to support merit selection of judges to protect the justice system.

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA
THIRD DIVISION

REPUBLIC PARTY OF MINNESOTA, an association; INDIAN ASIAN AMERICAN REPUBLICANS OF MINNESOTA, an association; REPUBLICAN SENIORS, an association, YOUNG REPUBLICAN LEAGUE OF MINNESOTA, a Minnesota nonprofit corporation, MINNESOTA COLLEGE REPUBLICANS, an association; GREGORY F. WERSAL, individually; CHERYL L. WERSAL, individually; MARK E. WERSAL, individually; CORWIN C. HULBERT, individually; CAMPAIGN FOR JUSTICE, an association; MINNESOTA AFRICAN AMERICAN REPUBLICAN COUNCIL, an association; MUSLIM REPUBLICANS, an association; MICHAEL MAXIM, individually; and KEVIN J. KOLOSKY, individually,

Plaintiffs,

vs.

VERNA KELLY, in her capacity as Chairperson of the Minnesota Board of Judicial Standards, or her successor; CHARLES E. LUNDBERG, in his capacity as Chair of the Minnesota Lawyers Professional Responsibility Board, or his successor; and EDWARD J. CLEARY, in his capacity as Director of the Minnesota Office of Lawyers Professional Responsibility, or his successor,

Defendants.

Case No. 98-831(MJD)

DECLARATION OF ERIC L. LIPMAN

ERIC L. LIPMAN, deposes and states as follows:

1. I am the Deputy Secretary of State of Minnesota.

2. Under the Constitution of the State of Minnesota, and many subsequent laws enacted by the Minnesota Legislature, the Office of the Secretary of State undertakes and administers many of the functions relating to elections. For example, the Secretary of State accepts petitions and affidavits of candidacy for elective offices, including judicial office, that are voted on by the residents of more than one Minnesota county. (*See* Minnesota Statutes, Section 204B.09, Subdivision 1). Further, the Secretary of State collects and maintains detailed information on the vote totals in elections conducted in the State of Minnesota. (*See* Minnesota Constitution, Article VII, Section 8).

3. I undertook a review of the election records of the Secretary of State's office before authoring this declaration. A numerical breakdown of the number of contested elections in comparison with the total number of elections for judicial positions for the elections held in 1994, 1996 and 1998 throughout the State of Minnesota is as follows:

Election Year	Total Number of Election Contests for District Court, Court of Appeals and the Minnesota Supreme Court	Number of Contested Elections	Number of Uncontested Elections
1994	67	7	60
1996	121	16	105
1998	90	11	79
Combination of Years	278	34	244

4. The election records for the last three (3) general elections in the State of Minnesota, held in the years 1994, 1996 and 1998, for the positions of judge of the District Court, Court of Appeals and the Minnesota Supreme Court, suggest that in the vast majority of those elections, the incumbent judge seeking re-election was not opposed for re-election.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

/s/ ERIC L. LIPMAN
ERIC L. LIPMAN

Executed on: January 26, 1999

Signed before me on 1/26/1999

(LOGO) JEFFREY SIGURDSON
NOTARY PUBLIC –
MINNESOTA
DAKOTA COUNTY
My Comm. Expires
Jan. 31, 2000

/s/ Jeffrey Sigurdson

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA
THIRD DIVISION

REPUBLICAN PARTY OF MINNESOTA, an association; INDIAN ASIAN AMERICAN REPUBLICANS OF MINNESOTA, an association; REPUBLICAN SENIORS, an association, YOUNG REPUBLICAN LEAGUE OF MINNESOTA, a Minnesota nonprofit corporation, MINNESOTA COLLEGE REPUBLICANS, an association; GREGORY F. WERSAL, individually; CHERYL L. WERSAL, individually; MARK E. WERSAL, individually; CORWIN C. HULBERT, individually; CAMPAIGN FOR JUSTICE, an association; MINNESOTA AFRICAN AMERICAN REPUBLICAN COUNCIL, an association; MUSLIM REPUBLICANS, an association; MICHAEL MAXIM, individually; and KEVIN J. KOLOSKY, individually,

Plaintiffs,

vs.

VERNA KELLY, in her capacity as Chairperson of the Minnesota Board of Judicial Standards, or her successor; CHARLES E. LUNDBERG, in his capacity as Chair of the Minnesota Lawyers Professional Responsibility Board, or his successor; and EDWARD J. CLEARY, in his capacity as Director of the Minnesota Office of Lawyers Professional Responsibility, or his successor,

Defendants.

Case No. 98-831(MJD)

DECLARATION OF JULIANNE ORTMAN

JULIANNE ORTMAN states as follows:

1. I am a registered voter in Minnesota and reside with my husband in Chanhassen, Minnesota. We are both licensed attorneys and practice law at our own law firm.

2. Both my husband and I are members of the Republican Party of Minnesota.

3. In 1998, I ran for judicial office in the First Judicial District, Carver County. I ran against an an incumbent judge, Phillip T. Kanning. A true and correct copy of a Shakopee Valley News article dated September 3, 1998 is attached hereto as Exhibit A and is incorporated herein by reference

4. From the beginning of my 1998 judicial campaign, Canon 5 affected how I campaigned. Specifically, I did not do the following campaign activities that I otherwise would have done:

   (i) personally attend and direct my campaign representatives, including my husband, Ray Ortman, and others, to attend political party gatherings on my behalf

   (ii) personally announce and direct my campaign representatives, including Ray Ortman and others, to announce some of my views on disputed legal and political issues

   (iii) personally identify and direct my campaign representatives, including Ray Ortman and others, to identify myself as a past member of the Republican Party of Minnesota

   (iv) personally seek, accept and use the endorsement of the Republican Party of Minnesota and direct my campaign representatives, including Ray Ortman and others, to seek, accept and use the

   endorsement of the Republican Party of Minnesota on my behalf

   (v) personally solicit campaign contributions for my campaign

5. Canon 5 was a major inconvenience for my 1998 campaign. It kept information about my campaign and me from the public.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on: January ___, 1999

_____

JULIANNE ORTMAN

_____

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA
THIRD DIVISION

REPUBLICAN PARTY OF MINNESOTA, et al.,

Plaintiffs,

vs.

CHARLES FLINN, JR., in his capacity as Chairperson of the Minnesota Board of Judicial Standards, or his successor, et al.,

Defendants.

Civ. No. 98-831 (MJD)

AFFIDAVIT OF CAROL M. SOLBERG

STATE OF MINNESOTA)
) ss.
COUNTY OF RAMSEY)

I, Carol M. Solberg, being first duly sworn, depose and say:

1. I am Administrative Director of the Minnesota District Judges Association and custodian of the Association's records.

2. Attached hereto as Exhibit A is a true and correct copy of the minutes of the Association's June 20-22, 1950, meeting at which the Association adopted the Canons of Judicial Ethics of the American Bar Association.

/s/ Carol M. Solberg
Carol M. Solberg

Subscribed and sworn to before me this

3 day of March, 1999.

/s/ Debra A. Shearen
Notary Public

DEBRA A. SHEAREN
[SEAL] NOTARY PUBLIC
– MINNESOTA
WASHINGTON COUNTY
My Commission Expires
January 31, 2000

Exhibit A

MINUTES OF ANNUAL MEETING
MINNESOTA DISTRICT JUDGES ASSOCIATION
RADISSON HOTEL, MINNEAPOLIS
JUNE 20, 21, 22, 1950

The Annual Meeting of the Minnesota District Judges Association was held at the Radisson Hotel in Minneapolis, pursuant to call of the senior member of the Association, Judge Edward Freeman of Duluth, on June 20, 1950, at 10:00 o'clock A. M.

The meeting was called to order by the President, Judge Mark Nolan, and the minutes were taken by the Secretary, Judge Milton D. Mason.

Those present were as follows:

DISTRICT	JUDGES
1	Schultz, Hall
2	Dane, Losvinger, Stewart, Pearson,
3	Gates
4	Weeks, Carroll, LaBelle, Lyons, Knudson, Fossen Selover, Rogers, Anderson, Guilford, Larson,
5	Anderson
6	Mason

7	Ruegemer, Barron, Rogosheake, Wilson
8	Morarity
9	A. B. Gislason, Enersen, S. P. Gialason, Heinzen
10	Nelson
11	Johnson, Holm, Nolan, Kenny, Freeman
12	Rolloff, Baker
13	Flinn
14	Montague, Lundgren, Sylvestre
15	Fullerton, Forbes, Hadler
16	Selnes
17	– – –
18	Keyes
19	Gustafson

On motion, duly seconded and carried, reading of the minutes was dispensed with.

Judge Mason read the treasurer's report, as follows:

Received from Judge Lundgren	$ 370.71	
From Judge Pearson, Minneapolis First National Bank	91.10	
From Dues, State Association	43.50	505.31
Paid to Arnold Pearson, [Illegible]	[illegible]	
George [Illegible] Jenson, Duluth, stationary	24.76	
Edith Dahl, typing juror's manual	10.00	
Mark Nolan, manual and postage	68.70	
Milton D. Mason, postage	[illegible]	
Bank charges on checks	.90	117.62
Balance on hand		$ 388.19

On motion duly seconded and carried, the treasurer's report was approved and filed.

Judge Nolan made the president's annual report, mentioning the Juror's Manual Committee and the Rules Committee as perhaps two of the most important. Judge Fullerton presented the report of his Committee, explaining the work, the cooperation with the State Board of Parole. Judge Schultz suggested that the agents recommend parole, or recommend a sentence. Judge Knudson explained that the intermediate plan between probation and prison walls had passed the legislature, but finances had not been arranged for. Judge Gate also spoke on this matter. It was then moved, seconded and carried that Gordon S. Jasok, Chairman of the State Board of Parole, be invited to speak. Rev. Mr. Engstrom of the Board, also present, spoke briefly, as did Judge Pearson, Judge Freeman, and Judge Fullerton. It was moved, seconded and carried that the committee be continued.

Judge Weeks discussed the Youth Conservation Commission, and introduced Mr. Reed of the Commission, who spoke on his work. Considerable discussion, participated in by many of the judges present, followed, with the consensus of opinion being that the right of review of YCC action by District Court be made mandatory, rather than permissive. It was moved, seconded and carried that the report be accepted and the committee continued.

Judge Kenny, Chairman of the Divorce Law Committee, read the report of that Committee, followed by considerable discussion.

The rules committee suggested participation in the Forum of proposed rules for June 21, and it was then

moved, seconded and carried that a further discussion of rules be held in the afternoon.

JUNE 20, 1950, 2:00 P. M.

It was moved, seconded and carried that the Association approve the six months interlocutory decree in divorce.

It was then moved and seconded that the Association approve a change of the law that either party may obtain a divorce after two years of separate maintenance be repealed, or amended, so that only the prevailing party may obtain a divorce. The motion was lost.

It was moved, seconded and carried that the Association feels that a divorce should be obtained only in the county of residence.

It was moved, seconded and carried that a committee be appointed by the incoming president to clarify this matter.

Judge Guilford, for the committee of retired judges to assist in the work, suggested for the committee that the law be amended to show that such retired judges, acting as referee or otherwise, are not practicing law. On motion made, seconded and carried, the report was adopted.

Judge Nelson spoke briefly on the Judicial Salary Committee, and the matter was passed.

Judge Freeman discussed the matter of courtroom decorum, and suggested that each district take care of its own problems in that respect.

Judge Freeman then moved that the Canons of Judicial Ethics of the American Bar Association be adopted by the Association. This motion was seconded and carried unanimously.

For the discussion of rules, Judge Hadler was given the chair by President Nolan, and there was a thorough discussion of the proposed rules, based to a large extent on those now used in federal practice and in other surrounding states.

It was moved, seconded and carried, that no action be taken until after participation in the State Bar Association's Forum on Rules, to be held on Wednesday. President Nolan then took the chair, and adjournment was taken until the morning of June 22nd.

JUNE 22, 1950, 10:00 A. M.

Judge Lyons gave a report on the Adoption Committee, and it was moved, seconded and carried, that this Committee be continued for another year and his report accepted.

Judge Johnson reported on the work of the Juror's Manual Committee, stating that the joint committee of Judges and the State Bar had approved the draft as submitted to the members of the Association. Judge Hadler, vice-president, was given the chair during this discussion. It was moved, seconded and carried that the report be approved.

As to publication procedure, it was moved, seconded and carried, that the Committee have power to act as they deemed best.

Judge Hadler, Chairman of the Rules Committee, presided during an extended discussion of the rules. Action of the Association was as follows, by motions made, seconded and carried:

Rule 26: Discovery by deposition
(Disapproved unanimously)

Rule 33: Interrogatories
(Approved in principle, 1 dissenting vote)

Rule 34:
(Approved in principle, Moriarity recorded as opposed.)

Rule 36:
(Approved in principle, Moriarity recorded as opposed.)

Rule 16: Pre-trial conferences
(Unanimously approved in principle.)

Rule 14:01, 82.02 – Third party practice
(Approved in principle, some dissenting votes.)

Judge Nolan then appointed a Nominating Committee consisting of Judge Flinn, as Chairman, with Judge LaBelle, Judge Kenny, Judge Lundgren and Judge Heinzen, to report this afternoon.

It was then moved and seconded that the Association recommend the adopting of a law requiring plaintiff to be a resident of the county for venue. The motion failed.

Rule 82.02
(No consideration or action; moved, seconded and carried.)

JUNE 22, 1950, 2:00 P. M.

Rule 5:04
Suggested that advisory committee reconsider the wording of Paragraph 2 as to advisability of requiring all pleadings to be filed a reasonable time before the opening of the term. (Carried unanimously.)

Rule 63:
Add "with consent of any judge so assigned."
(Approved with this addition.)

Rule 51:
(Recommend rule embodied in Alternative No. 51.)

It was moved, seconded and carried that the Secretary communicate the action of the Association to the Advisory Committee.

Judge Nelson reported further on the Salary Committee, and it was moved, seconded and carried that a committee for this purpose be re-named, to meet in the early fall with the Judicial Salary Committee of the State Bar Association, and submit a bill to the legislature.

A discussion of lawyers who have a large number of cases throughout the state, and being unable to handle them by being in more than one place at a time, followed. It was moved, seconded and carried that this matter be referred to the incoming officers.

Judge Flinn then reported for the Nominating Committee that the following had been nominated:

President – J. J. Hadler
Vice-President – Paul S. Carroll
Secretary-Treasurer – Sidney P. Gislason
Board of Governors – Mark Nolan
Judicial Council – G. A. Rolloff,
Milton D. Mason

Judge Hadler asked the Secretary to place the motion that the Secretary cast a unanimous ballot for the nominees. The motion was carried unanimously, and the Secretary cast the unanimous ballot.

There being no further business, the meeting was adjourned.

MILTON D. MASON,
Secretary

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA
THIRD DIVISION

REPUBLICAN PARTY OF MINNESOTA, an association; INDIAN ASIAN AMERICAN REPUBLICANS OF MINNESOTA, an association; REPUBLICAN SENIORS, an association, YOUNG REPUBLICAN LEAGUE OF MINNESOTA, a Minnesota nonprofit corporation, MINNESOTA COLLEGE REPUBLICANS, an association; GREGORY F. WERSAL, individually; CHERLYL L. WERSAL, individually; MARK E. WERSAL, individually; CORWIN C. HULBERT, individually; CAMPAIGN FOR JUSTICE, an association; MINNESOTA AFRICAN AMERICAN REPUBLICAN COUNCIL, an association; MUSLIM REPUBLICANS, an association; MICHAEL MAXIM, individually; and KEVIN J. KOLOSKY, individually,

Plaintiffs,

vs.

VERNA KELLY, in her capacity as Chairperson of the Minnesota Board of Judicial Standards, or her successor; CHARLES E. LUNDBERG, in his capacity as Chair of the Minnesota Lawyers Professional Responsibility Board, or his successor; and EDWARD J. CLEARY, in his capacity as Director of the Minnesota Office of Lawyers Professional Responsibility, or his successor,

Defendants.

Case No. 98-831(MJD)

DECLARATION OF ANTHONY G. SUTTON

ANTHONY G. SUTTON states as follows:

1. Since the summer of 1997, I have served as the Executive Director of the Republican Party of Minnesota. Before serving as Executive Director, I had more than ten (10) years of experience working on state and federal political campaigns.

2. In 1998, Canon 5 of the Code of Judicial Conduct made activities on behalf of Greg Wersal by any member of the Republican Party of Minnesota, including myself, a possible ethical violation against Greg Wersal. Greg Wersal was obligated under Canon 5 to instruct members of the Republican Party of Minnesota, including myself, not to campaign for him. Under Canon 5, all members of the Republican Party of Minnesota had to avoid campaigning for judicial candidates. It was clear to all Republicans who considered the issue that their activities in support of Greg Wersal could result in an ethical complaint against Greg Wersal filed by his opponent Associate Justice Alan Page or someone else. Undoubtedly, any type of ethical complaint would have hurt Greg Wersal's 1998 campaign. The safest course was for members of the Republican Party of Minnesota not to participate in the 1998 judicial elections unless a court injunction against Canon 5 was obtained.

3. The Republican Party of Minnesota sponsors every election year a series of meetings over four months. The meetings start at the neighborhood level, then go to the state senate district or county level, then to the congressional district level and finally to the statewide level. At the precinct caucuses held on March 3, 1998, delegates were elected to go to the state senate district or county convention. At the state senate district conventions and county conventions generally held in April, 1998, the delegates in

attendance elected delegates to attend the congressional district conventions generally held in May, 1998 and the June 18-20, 1998 state convention. At each level, attendees consider and vote on policy platform issues. At all the conventions after precinct caucuses, endorsements for appropriate level offices are made. In 1998, I attended various precinct caucuses, state senate district and county conventions, congressional district conventions and the state convention.

4. At all of these 1998 Republican Party of Minnesota gatherings, members of the party communicate and receive information about candidates for public office. Members of the party use this political information in many ways: when making campaign contributions; when considering endorsements; when voting, etc. Delegates prefer to receive information firsthand from the candidate or the candidate's campaign. Delegates prefer this type of direct information, rather than secondhand information.

5. The Republican Party of Minnesota uses endorsements of political candidates to unite the party behind one candidate and to make an affirmative statement to the public that the party favors the endorsed candidate for the particular office. When an endorsing convention gathers to consider one of multiple candidates, the understanding is that after the endorsement, all members of the party will unite to help that candidate get elected. Party endorsement brings many benefits to the candidate and the candidate's campaign, including campaign contributions, resources, credibility and visibility. A party endorsement also serves to galvanize the members of the party toward electing the endorsed candidate. It is a custom of the Republican Party of Minnesota

not to lend any support to statewide candidates who are not endorsed.

6. At the various precinct caucuses, state senate district and county conventions, congressional district conventions and the state convention I attended in 1998, I did not see Greg Wersal or his campaign representatives at any of them. It is my understanding that Canon 5 prohibited Greg Wersal and his campaign representatives from attending these meetings. The members of the Republican Party of Minnesota were thereby deprived of information from Greg Wersal and his campaign representatives because of Canon 5.

7. The eight Republican Congressional District Conventions were held in late April and May of 1998. The location and dates of the eight congressional district conventions were as follows:

First Congressional District: May 1 and 2, Mayo Center, Rochester, Minnesota
Second Congressional District: May 1 and 2, Worthington High School, Worthington, Minnesota
Third Congressional District: May 16, Holiday Inn, St. Louis Park, Minnesota
Fourth Congressional District: May 2, St. Paul Technical Vocational Institute, St. Paul, Minnesota
Fifth Congressional District: April 25, Minneapolis, Minnesota
Sixth Congressional District: May 2, Lakeville Jr. High, Lakeville, Minnesota
Seventh Congressional District: May 8 and 9, Red River Inn, Moorhead, Minnesota
Eighth Congressional District: April 24 and 25, Kahler Hotel, Hibbing, Minnesota

8. I was responsible for delivering the Official Call to the 1998 Republican State Convention to all the state

convention delegates. The state convention convened at 6:00 p.m., June 18, 1998, at Target Center, Minneapolis, Minnesota. One of the four stated purposes of the state convention was to endorse judicial candidates for the Minnesota Supreme Court. A true and correct copy of the Official Call is attached hereto as Exhibit A and is incorporated herein by reference.

9. I was responsible for publishing and distributing the Official Program of the 1998 Republican State Convention. The agenda for the convention at page 11 indicates that the endorsement of judicial candidates was to occur on June 20, 1998. A true and correct copy of the Official Program is attached hereto as Exhibit B and is incorporated herein by reference.

10. After the state convention convened on June 18, 1998, there was a long debate over amending Rule 23 on endorsements to permit absent judicial candidates to be endorsed. State Deputy Chairman Moonyeen Bongaards moved an amendment which consisted of Rule 23m which stated the following:

> 23m. If a candidate is unavailable to fulfill the obligations of this Rule 23, a delegate or seated alternate may volunteer to fulfill the obligations of this Rule 23 on the absent candidate's behalf.

11. The supporters of the amendment distributed a flyer. A true and correct copy of the flyer is attached hereto as Exhibit C and is incorporated herein by reference.

12. The debate on Moonyeen Bongaard's motion to amend the proposed rules was audiotaped and transcribed. I have reviewed the transcript and attest to its accuracy. A true and correct copy of the transcript is attached hereto as Exhibit D and is incorporated herein by reference.

13. On June 20, 1998, I read the *Star Tribune* newspaper article about the state convention's pending consideration of endorsement of candidates for judicial office. The article said that Greg Wersal, to comply with the judicial rules, was not seeking endorsement of the state convention. The article also said that Greg Wersal, to comply with judicial rules, would have to repudiate the endorsement on Monday, June 22, 1998, if the state convention endorsed him on Saturday, June 20, 1998. A true and correct copy of the *Star Tribune* article is attached hereto as Exhibit E and is incorporated herein by reference. This article clearly hurt the prospects of those at the state convention who wished to endorse Greg Wersal.

14. On June 20, 1998, I heard Chairman Bill Cooper give a speech on endorsing judicial candidates before he left the state convention. Bill Cooper's speech was audiotaped and transcribed. I have reviewed the transcript and attest to its accuracy. A true and correct copy of the transcript is attached hereto as Exhibit F and is incorporated herein by reference.

15. During the time I was at the state convention, I never saw Greg Wersal or his campaign representatives there. It is my understanding that they did not attend because Canon 5 prohibited him from being there. I wish Greg Wersal and his campaign representatives had been there so the state convention delegates and I could have received information about Greg Wersal and his campaign.

16. Because rule 23m was adopted, delegates and seated alternates could submit the candidate nomination forms on behalf of Greg Wersal, rather than he doing it personally. Delegates and seated alternates submitted approximately 20 candidate nomination forms to the Convention Secretary on behalf of Greg Wersal. True and correct copies of the candidate

nomination forms submitted are attached hereto as Exhibit G and are incorporated herein by reference.

17. At the state convention, delegates in favor of endorsing judicial candidates and in favor of endorsing Greg Wersal distributed flyers prepared and paid for by Senate District 46 Delegate Corwin Hulbert. I saw and read these flyers at the state convention. True and correct copies of these flyers are attached hereto as Exhibit H and are incorporated herein by reference.

18. At the state convention, delegates opposed to endorsing judicial candidates and opposed to endorsing Greg Wersal distributed flyers prepared and paid for by George W. Soule (Alternate, Senate District 60) and Kathleen A. Meyerle (Delegate, Olmsted County). It is my understanding that at the time of the state convention, Kathleen Meyerle was the chair of State Judicial Election Commission. Recently, George Soule replaced Kathleen A. Meyerle as the chair of the State Judicial Election Commission. I saw and read this flyer at the state convention. True and correct copies of this flyer are attached hereto as Exhibit I and are incorporated herein by reference.

19. The debate at the state convention on the motion to consider the endorsement of judicial candidates was audiotaped and transcribed. I listened to the debate. I have reviewed the transcript and attest to its accuracy. A true and correct copy of the transcript is attached hereto as Exhibit J and is incorporated herein by reference.

20. The state convention's vote on considering the endorsement of judicial candidates was 344 to 390; the motion failed. If Greg Wersal or his campaign representatives had been allowed to be at the state convention, I am sure this motion would have

passed. As far as I know, it was the first time in the history of the party that the state convention refused to pass a motion to consider endorsement of a candidate for a statewide office. On June 21, 1998, I read a *Star Tribune* article reporting on the state convention's failed motion to consider endorsements of judicial candidates. A true and correct copy of this *Star Tribune* article relating to the vote is attached hereto as Exhibit K and is incorporated herein by reference.

21. After the state convention's vote on the consideration of endorsement of judicial candidates failed, the state convention took up the issue of adopting a platform. I was responsible for publishing and distributing the proposed platform for the delegates at the state convention. I reviewed the platform before and after it was printed. The proposed platform contained plank 6.4 supporting the reform of "allowing judicial candidates the right to campaign & seek party endorsement." A true and correct copy of the proposed platform is attached hereto as Exhibit L and is incorporated herein by reference.

22. The State Convention adopted plank 6.4 of the proposed platform without amendment. This vote shows, in my opinion, that the state convention would have endorsed Greg Wersal if Canon 5 has not existed.

23. There was a short debate on an additional plank related to judicial campaigning. The additional proposed plank was to allow judicial candidates the right to state their opinions on legal issues and past cases. I listened to the debate. The state convention adopted the additional proposed plank. The debate at the state convention on the motion to adopt this additional plank was audiotaped and transcribed. I

have reviewed the transcript and attest to its accuracy. A true and correct copy of the transcript is attached hereto as Exhibit M and is incorporated herein by reference.

24. After the state convention, the Republican Party of Minnesota – according to its custom of not supporting unendorsed statewide candidates – could do nothing for Greg Wersal. The idea of including him on the statewide sample ballot was considered and rejected by the Executive Committee because of the custom of only supporting endorsed candidates. Canon 5 has accomplished its objective of keeping the Republican Party of Minnesota out of the 1998 judicial elections.

25. In the 1998 judicial election campaign, the Republican Party of Minnesota and its members desired to communicate with Greg Wersal in the following ways:

- receive information from Greg Wersal about himself (e.g., name, law school and current employer) and his campaign at the following Republican Party of Minnesota events: March 3, 1998 precinct caucuses, the March and April 1998 state senate district and county conventions, the April and May 1998 congressional district conventions and the June 18 through June 20, 1998 state convention
- receive information from Greg Wersal about his views on disputed legal and political issues
- receive information from Greg Wersal about his past or current political party memberships
- receive information from Greg Wersal about him seeking, accepting and using the endorsement of the Republican Party of Minnesota

- receive information from Greg Wersal soliciting funds for his campaign

26. In the 1998 judicial election campaign, the Republican Party of Minnesota and its members desired to communicate with each other – without Greg Wersal present – in the following ways on behalf of Greg Wersal:

    - communicate and receive information about Greg Wersal (e.g., name, law school and current employer) and his campaign at the following Republican Party of Minnesota events: March 3, 1998 precinct caucuses, the March and April 1998 state senate district and county conventions, the April and May 1998 congressional district conventions and the June 18 through June 20, 1998 state convention
    - communicate and receive information about Greg Wersal and his views on disputed legal and political issues
    - communicate and receive information about Greg Wersal and his past or current political party memberships
    - communicate and receive information about Greg Wersal and him seeking, accepting, and using the endorsement of the Republican Party of Minnesota
    - communicate and receive personal solicitations for campaign contributions for Greg Wersal

27. In the 1998 judicial election campaign, the Republican Party of Minnesota desired to communicate with the public in the following ways on behalf of Greg Wersal:

    - communicate and receive information about Greg Wersal and other judicial candidates (e.g., name,

law school and current employer) in connection with the following Republican Party of Minnesota events: March 3, 1998 precinct caucuses, the March and April 1998 state senate district and county conventions, the April and May 1998 congressional district conventions and the June 18 through June 20, 1998 state convention

    - communicate and receive information about Greg Wersal and the other judicial candidates and their views on disputed legal and political issues
    - communicate and receive information about Greg Wersal and the other judicial candidates and their past or present political party memberships
    - communicate and receive information about Greg Wersal and the other judicial candidates and them seeking, accepting and using the endorsement of the Republican Party of Minnesota
    - communicate and receive solicitations for campaign contributions

    In 1998, Canon 5 prohibited the Republican Party of Minnesota from communicating and receiving these constitutionally-protected communications.

28. The subject of claim 1 of the Second Amended Complaint filed on or about September 2, 1998, is Canon 5's infringement of the Republican Party of Minnesota and its members' constitutionally-protected speech advocating Greg Wersal at 1998 Republican Party caucuses, conventions and meetings. The following sections of Canon 5 are relevant to the infringement of the Republican Party of Minnesota and its members' constitutionally-protected speech:

    - "[A] candidate for election to judicial office shall not . . . attend political gatherings" or "speak

to . . . political organization gatherings, on his or her own behalf." Code, Canon 5 A (1), B (1).

- "A candidate for judicial office . . . shall encourage family members to adhere to the same standards of political conduct in support of the candidate as apply to the candidate; (b) shall prohibit employees who serve at the pleasure of the candidate, and shall discourage other employees and officials subject to the candidate's direction and control from doing on the candidate's behalf what the candidate is prohibited from doing under the Sections of this Canon; (c) . . . shall not authorize or knowingly permit any other person to do for the candidate what the candidate is prohibited from doing under the Sections of this Canon." Code, Canon 5 A (3).

In the 1998 judicial election campaign, these sections of Canon 5 stopped the Republican Party of Minnesota and its members from engaging in constitutionally-protected speech advocating Greg Wersal at Republican Party caucuses, conventions and meetings.

29. The subject of claim 2 of the Second Amended Complaint is Canon 5's infringement of the Republican Party of Minnesota and its members' constitutionally-protected speech advocating Greg Wersal and his views on legal and political issues. The following sections of Canon 5 are relevant to the infringement of the Republican Party of Minnesota and its members' constitutionally-protected speech.

    - "A candidate for judicial office . . . shall not . . . announce his or her views on disputed legal or political issues." Code, Canon 5 A (3).

    - "A candidate for judicial office . . . (a) . . . shall encourage family members to adhere to the same

standards of political conduct in support of the candidate as apply to the candidate; (b) shall prohibit employees who serve at the pleasure of the candidate, and shall discourage other employees and officials subject to the candidate's direction and control from doing on the candidate's behalf what the candidate is prohibited from doing under the Sections of this Canon; (c) . . . shall not authorize or knowingly permit any other person to do for the candidate what the candidate is prohibited from doing under the Sections of this Canon." Code, Canon 5 A (3).

In the 1998 judicial election campaign, these sections of Canon 5 stopped the Republican Party of Minnesota and its members from advocating Greg Wersal and his views on legal and political issues.

30. The subject of claim 3 of the Second Amended Complaint is Canon 5's infringement of the Republican Party of Minnesota and its members' constitutionally-protected speech advocating Greg Wersal and his current or past membership in the Republican Party of Minnesota. The following sections of Canon 5 are relevant to the infringement of the Republican Party of Minnesota and its' members' constitutionally-protected speech:

    - "A candidate for election to judicial office shall not . . . identify themselves as members of a political organization, except as necessary to vote in an election." Code, Canon 5 A (1).

    - "A candidate for judicial office . . . (a) . . . shall encourage family members to adhere to the same standards of political conduct in support of the candidate as apply to the candidate; (b) shall prohibit employees who serve at the pleasure of the candidate, and shall discourage other employees and officials subject to the candidate's

direction and control from doing on the candidate's behalf what the candidate is prohibited from doing under the Sections of this Canon; (c) . . . shall not authorize or knowingly permit any other person to do for the candidate what the candidate is prohibited from doing under the Sections of this Canon." Code, Canon 5 A (3).

In the 1998 judicial election campaign, these sections of Canon 5 stopped the Republican Party of Minnesota and its members from advocating Greg Wersal and his current or past membership in the Republican Party of Minnesota.

31. The subject of claim 4 of the Second Amended Complaint is Canon 5's infringement of the Republican Party of Minnesota and its members' constitutionally-protected speech supporting or endorsing Greg Wersal. The following sections of Canon 5 are relevant to the infringement of the Republican Party of Minnesota and its members' constitutionally-protected speech:

- "A candidate for election to judicial office shall not . . . seek, accept or use endorsements from a political organization. A candidate may- . . . establish committees to conduct campaigns for the candidate . . . Such committees . . . shall not seek, accept or use political organization endorsements." Code, Canon 5 A (1), B (2).
- "A candidate for judicial office . . . (a) . . . shall encourage family members to adhere to the same standards of political conduct in support of the candidate as apply to the candidate; (b) shall prohibit employees who serve at the pleasure of the candidate, and shall discourage other employees and officials subject to the candidate's direction and control from doing on the candidate's behalf what the candidate is prohibited

from doing under the Sections of this Canon; (c) . . . shall not authorize or knowingly permit any other person to do for the candidate what the candidate is prohibited from doing under the Sections of this Canon." Code, Canon 5 A (3).

In the 1998 judicial election campaign, these sections of Canon 5 stopped the Republican Party of Minnesota and its members from supporting or endorsing Greg Wersal.

32. The subject of claim 5 of the Second Amended Complaint is Canon 5's infringement of the Republican Party of Minnesota and its members' constitutionally-protected speech to cause or receive communications soliciting campaign contributions on behalf of Greg Wersal. The following sections of Canon 5 are relevant to the infringement of the Republican Party of Minnesota and its members' constitutionally-protected speech:

- "A judicial candidate shall not personally solicit . . . campaign contributions." Code, Canon 5 B (2).
- "A candidate for judicial office . . . (a) . . . shall encourage family members to adhere to the same standards of political conduct in support of the candidate as apply to the candidate; (b) shall prohibit employees who serve at the pleasure of the candidate, and shall discourage other employees and officials subject to the candidate's direction and control from doing on the candidate's behalf what the candidate is prohibited from doing under the Sections of this Canon; (c) . . . shall not authorize or knowingly permit any other person to do for the candidate what the candidate is prohibited from doing under the Sections of this Canon." Code, Canon 5 A (3).

In the 1998 judicial election campaign, these sections of Canon 5 stopped the Republican Party of Minnesota and its members from causing or receiving communications soliciting campaign contributions on behalf of Greg Wersal.

33. The following people are members of the Republican Party of Minnesota: Lawrence Aeshlimann, Bonn Clayton, April Guerin, Corwin Hulbert, Ed Lethert, Michael Maxim, Anthony Sutton, Cheryl Wersal, Mark Wersal, Jeff O'Brien, Brian McClung, Larry Alexander, Jack Gausman, Jesse Singh and Khalid Kader.

34. Lastly, I think it is unfair that the only political organizations regulated by Canon 5 are political parties. Special interest groups like Minnesota Trial Lawyers Association, Mothers Against Drunk Driving and the Bar Associations are not regulated by Canon 5. These special interest groups and their members are very active in judicial campaigns. It also bothers me that since members of these groups can also be members of political parties that these people can use their special interest groups to advocate for the election of a judicial candidate, but not their political party. Canon 5 does not make sense to me.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on: January ___, 1999

_____
ANTHONY G. SUTTON

_____

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA
THIRD DIVISION

REPUBLICAN PARTY OF MINNESOTA, et al.,

Plaintiffs,

vs.

VERNA KELLY, in her capacity as Chairperson of the Minnesota Board of Judicial Standards, or her successor, et al.,

Defendants.

Civ. No. 98-831 (MJD)

AFFIDAVIT OF THOMAS C. VASALY

STATE OF MINNESOTA)
) ss.
COUNTY OF RAMSEY)

I, Thomas C. Vasaly, being first duly sworn, depose and say as follows:

1. I am an Assistant Attorney General for the State of Minnesota and represent Defendants Charles Lundberg and Edward Cleary herein.

2. Attached hereto as Exhibit 13 are the cover page, pp. 13-18, and the top of p. 19 of the transcript of the portion of the November 1, 1998, *60 Minutes* episode entitled "Justice for Sale?" which our office received from CBS News.

3. Also attached is a copy of my January 26, 1999, request to CBS News for permission to reproduce the

transcript along with the handwritten approval of Ms. Heddy Gold of the CBS News, Business Affairs Department.

/s/ Thomas C. Vasaly
THOMAS C. VASALY

Subscribed and sworn to before me this

28th day of January, 1999.

/s/ C. O. Ransom
Notary Public
My commission expires: _____

[SEAL] C. O. RANSOM
NOTARY PUBLIC – MINNESOTA
My Comm. Exp. Jan. 31, 2000

[LOGO] CBS NEWS
524 West 57th Street, New York, N.Y. 10019

60 MINUTES

[Image Omitted In Printing]

VOTE EARLY, VOTE OFTEN – Produced by
Richard Greenberg, Mary Murphy
I'VE GOT A SECRET – Produced by John Tiffin
JUSTICE FOR SALE? – Produced by Tom Anderson
A FEW MINUTES WITH ANDY ROONEY

November 1, 1998

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Transcript produced by *Burrelle's Information Services*
Box 7 • Livingston, New Jersey 07039

(*Editorial cartoon shown of a clown behind a judge's bench, a scale on the bench which has a money bag weighing down one side, and a sign which reads, 'Texas Judicial System'*)

WALLACE: (*Voiceover*) After our report aired, some editorial cartoonists painted the court as a bunch of corrupt clowns.

(*Close-up of sign on building reading, 'Texas Medical Association'; footage of Kim Ross talking with Wallace*)

WALLACE: (*Voiceover*) And the Texas medical Association spread the word that the court, by approving fat malpractice awards, was putting some doctors out of business. So Kim Ross, the doctors' chief lobbyist, decided to retaliate.

So you said, 'We're going to get rid of this court.'

Mr. KIM ROSS: Yeah, yeah. We said, 'This isn't right. Something has to be done.'

(*Footage of several campaign ads that were run in Texas*)

WALLACE: (*Voiceover*) Kim Ross launched an all-out attack on the old court in 1988 and, joined by big business, he funded a group of candidates he called the clean slate. Some of those candidates even used our report in their commercials to paint the old court as corrupt and bad for Texas.

(*Excerpt from campaign ads that were run in Texas*)

WALLACE: (*From campaign ad*) Is justice for sale in Texas?

Announcer #1: (*From campaign ad*) (*Voiceover*) 60 MINUTES asked that question. Tom Phillips has said no to big money.

WALLACE: (*Voiceover*) Tom Phillips, the chief justice, told us that commercial helped him win the election.

(*Footage of Texas Supreme Court proceedings; Walt Borges walking through courthouse and sitting in court*)

WALLACE: (*Voiceover*) Four other judges on the so-called clean slate also won. But what is it they've cleaned up? Walt Borges has written about the court for 10 years, first as a reporter, now as a consumer advocate, and he says this new court has been influenced by big money just as much as the old court. He says it's just coming from a different source.

(*Footage of Wallace and Borges*)

WALLACE: Back in 1987, when we did the first piece here, where were the justices at that time getting their contributions from?

Mr. WALT BORGES: They were getting a lot of their contributions from the lawyers, the consumers' lawyers.

WALLACE: Plaintiffs' lawyers.

Mr. BORGES: Plaintiffs' lawyers.

WALLACE: Who won most cases?

Mr. BORGES: The studies that we – we did show that about 67 percent of the time, two-thirds of the time, the plaintiffs won the cases in 1987.

WALLACE: And today?

Mr. BORGES: Today, the defendant wins 69 percent of the time.

WALLACE: (*Voiceover*) By 'defendant,' Borges means the business and insurance companies who are being sued.

How do insurance companies fare before this court?

Mr. BORGES: The insurance companies win roughly 90 percent of the time.

WALLACE: What you're saying is it went 180 degrees the other way.

Mr. BORGES: The philosophy of the court has shifted. If there is a bias in 1985, there is now a bias the op – opposite direction in 1998.

(*Footage of the outside of a building; Texas Supreme Court justices leaving their bench; close-up of Payola Justice report; Craig McDonald sitting at desk and speaking on the phone*)

WALLACE: (*Voiceover*) Why? An outfit called Texans for Public Justice says the new court, unlike the court in 1987, receives most of its contributions from corporations and doctors, and their lawyers. Their recent report, called Payola Justice, has infuriated the court. But the group's director, Craig McDonald, insists it's right on the money.

(*Footage of Wallace and McDonald*)

Mr. CRAIG McDONALD: We took a look at the campaign finances of this court and found that the members of this Supreme Court, in their quest to raise $9 million for re-election, raised $4 million of that money from the

very lawyers and parties who had cases before the court during that period.

WALLACE: Are you suggesting that Supreme Court justices in Texas can still be bought?

Mr. McDONALD: This court seems to reward its highest donors.

(*Footage of Wallace and Borges*)

WALLACE: Are these men and women on the current court dishonest, unethical?

Mr. BORGES: As individuals, no. As a system, the system is corrupt, and it leads to corrupt results. A tremendous amount of – of business, medical money, was – was mobilized and used to elect a – a court that basically had a singular phil – philosophy, and that was very pro-business, pro-defense.

(*Footage of Judge Rose Spector on the campaign trail*)

WALLACE: (*Voiceover*) And out on the campaign trail last month, Supreme Court Judge Rose Spector is hearing from some Texas voters who are upset about the court's swing to the right.

Unidentified Woman: Our Supreme Court needs some Democrats there to vote against the corporations and the HMOs. We need you there.

WALLACE: (*Voiceover*) A judge for 24 years, Spector has to campaign as if she were running for town council.

Unidentified Man #1: As long as you're a Democrat, that's the main thing.

WALLACE: (*Voiceover*) She's a Democrat in a tight race, and she knows that her campaign is not about the law, it's about politics.

(*Footage of Judge Spector at a speaking engagement*)

Judge ROSE SPECTOR: It's great to be here, great to be among so many Democrats. Our Supreme Court race is close. I need your help.

(*Footage of John Hill; photograph of Texas Supreme Court justices at the time of Hill; Wallace and Hill*)

Former Judge JOHN HILL: It's Democrats vs. Republicans, which is ridiculous. There's no Republican justice or Democratic justice; there's just justice.

WALLACE: (*Voiceover*) John Hill was chief justice of the court back in the '80s.

You told me back in '87, you were resigning to reform the system.

Mr. HILL: Exactly.

WALLACE: And it hasn't been reformed up to now.

Mr. HILL: Well, it hasn't been perfectly reformed. We've put limitations on the amount of contributions.

WALLACE: How much?

Mr. HILL: Five thousand dollars per individual. That's not low enough to suit me, but that was the compromise.

(*Close-up of Senate bill; graphic on screen, 'Law firms, $30,000; political action committees, $300,000'; Wallace and Hill*)

WALLACE: (*Voiceover*) Under that compromise, however, law firms can still give $30,000, political action committees can give $300,000. And what is the price of a campaign these days for the Supreme Court?

Mr. HILL: It's still outrageous, and I think it's up to about $2 million on the average.

(*Footage of Texas Supreme Court proceedings; Wallace and Bud Shivers; graphic on screen, 'Texans for Lawsuit Reform, Working together for a fair, honest and balanced civil justice system'; Wallace and Bud Shivers*)

Unidentified Man #2: Thank you. Be seated.

WALLACE: (*Voiceover*) And even though they have to raise those millions of dollars, judges on the court insist they are honest and ethical. And not surprisingly, Bud Shivers agrees. His organization, Texans for Lawsuit Reform, has been a major donor to judges who are pro-business.

Mr. BUD SHIVERS: Today, less than 40 percent of the contributions come from lawyers.

WALLACE: And the 60 percent comes from?

Mr. SHIVERS: Ordinary individuals, businesspeople who have no interest before the court, don't anticipate ever having any interest before the court.

WALLACE: Mr. Shivers, 60 percent of the money from businesses, corporate interests, hospitals? It – it doesn't make sense that they have no interest before the court. They've got to have interest before the court.

Mr. SHIVERS: Business has an absolute interest in a fair and impartial mainstream court.

WALLACE: So this is kind of a disinterested, God-fearing business community. All they're interested in is fair justice.

Mr. SHIVERS: Well, I'm not going to speak to their religious beliefs, but I'll tell you why I contribute to members of the Supreme Court, and that's because I think a fair and impartial judiciary is a bedrock of civilized democracy.

(*Footage of Wallace walking with State Senator Rodney Ellis; Wallace and Shivers*)

WALLACE: (*Voiceover*) But State Senator Rodney Ellis says that's not the real reason people like Shivers and others contribute to judges' campaigns. Ellis is chairman of a Senate committee that oversees the court.

State Senator RODNEY ELLIS: Most people who give large amounts of money tend to be bottom-line oriented. You don't give campaign contributions just because it's a philanthropic endeavor. And I think those large amounts of money create a distrust on the part of the public. They create a perception that justice is for sale in this state.

(*Footage of Wallace and Hill*)

WALLACE: You say this is a first-rate court.

Mr. HILL: Yes, it is, I think, by – by what I look at it, and that is for traditional judges that go by the law that's written by the Legislature.

(*Footage of Wallace and McDonald*)

WALLACE: John Hill resigned as chief justice because he thought that the system was corrupt, joined a law

firm, and he thinks that the current court is doing a first-rate job.

Mr. McDONALD: Well, the court is doing a first-rage [sic] job for Mr. Hill's clients. We're not so sure it's doing a first-rate job for Texas.

WALLACE: All right. Prove to me that they're doing a first-rate job for Mr. Hill's clients.

Mr. McDONALD: Whenever there is a plaintiff involved – a victim, if you will, or a consumer up against an HMO, a toxic polluter, an insurance company, a hospital, 80 percent-20 percent, the hospital, the insurance company wins. Those are John Hill's clients. He is happy with the system as it is.

(Footage of outside of tall office building; secretary at desk; sign on door, 'Liddell, Sapp, Zivley, Hill & LaBoon, LLP'; Wallace and Hill)

WALLACE: *(Voiceover)* And being part of the system means that Hill's Houston law firm still contributes tens of thousands of dollars to Supreme Court candidates.

Mr. HILL: We give money to judges, and it's in varying amounts. I think that's part of our civic responsibility and our legal responsibility, and I feel it very deeply.

(Footage of Texas Supreme Court proceeding; Judge Nathan Hecht at bench)

WALLACE: *(Voiceover)* But Hill concedes it's demeaning that judges have to spend that money on TV commercials that have nothing whatsoever to do with the law. Example: Supreme Court Justice Nathan Hecht aired this one.
(Excerpt from Hecht campaign ad)

Announcer #2: *(From ad)* *(Voiceover)* He's just Nathan, a man never too busy to teach Sunday school, or to entertain the older people at his church.

(Footage of Wallace and Hill)

Mr. HILL: Why should they have to go out here and take their time away from their work and their duties to the people and grovel around with lawyers and others to raise enormous amount of money to seek that office, just to say, 'I want to stay'?

WALLACE: Do you disagree with the central finding of that Payola Justice report that many of the lawyers and law firms who've given money to the judges still have cases before the court?

Mr. HILL: Well, sure, they have cases before the court. You didn't need a research piece to establish that.

WALLACE: You remember the Havner case, of course.

Mr. HILL: I do, of course.

(Footage of Hill arguing before the court)

WALLACE: *(Voiceover)* Pharmaceutical case. You were defending a drug company. Just one week after arguing before the court, you yourself signed a letter to raise money for one of the judges, Judge Baker.

Mr. HILL: Well, the timing of that was – was lousy.

WALLACE: I have the letter here.

(Close-up of letter)

Mr. HILL: *(Voiceover)* Well, that's fine.

Judge Baker, when he realized that the case was under submission that I was in . . .

(*Close-up of John L. Hill's signature*)

Mr. HILL: (*Voiceover*) . . . and that I was a signatory to that – one of the signatories to that letter . . .

(*Footage of Judge Baker; Texas Supreme Court proceeding; camera pans Texas Supreme Court justices*)

WALLACE: (*Voiceover*) But Judge Baker did not remove himself from the case until the lawyer arguing against John Hill objected to his letter. And the fact is, judges in Texas rarely withdraw from cases just because one of the lawyers or corporations appearing before them has contributed to their campaigns. For years, John Hill has urged the governor to cleanup the system by appointing judges to a short term before they have to face the electorate.

(*Footage of Governor George Bush; Wallace and Ross*)

WALLACE: (*Voiceover*) But so far, Governor George Bush and the Legislature have refused to go along. Even lobbyist Kim Ross, who spent a lot of money to unseat the old court, agrees that something has to be done.

Mr. ROSS: As you know, this is an arms race.

WALLACE: When you say an arms race, the ammunition is money, both sides.

Mr. ROSS: It ought to be done differently, and there is not a member of that court that wouldn't tell you right now . . .

WALLACE: From the chief justice on down . . .

Mr. ROSS: On down, yeah.

WALLACE: . . . everybody says, 'Hey let's do it differently.'

Mr. ROSS: Yeah. In – in – including us.

(*Footage of Texas Supreme Court proceeding; Wallace and Ellis*)

Chief Justice TOM PHILLIPS: That concludes the argument in . . .

WALLACE: (*Voiceover*) But while the chief justice, Tom Phillips, calls for reform he also acknowledges he has raised more money in campaign contributions than any Supreme Court judge in Texas history. State Senator Rodney Ellis says that many judges talk reform down there, but the judges actually lobbied against legislation he sponsored to limit campaign contributions.

What happened?

St. Sen. ELLIS: Most people though the bill was going too far too fast, the limits were too low, so a good number of judges around the state were making calls to members of the Legislature, judges who were concerned about if the limits were too low, they wouldn't be able to raise enough money to get elected.

(*Footage of Hill at desk*)

WALLACE: (*Voiceover*) And former Chief Justice John Hill says it would be less about money, if only Texans themselves demanded it.

Mr. HILL: We haven't been able to get a coalition together, but we're making a lot of progress, Mike. You

helped get this started. I hope you'll help get us over the line. I really beg and implore the people of Texas to change this system. Pray for us it will be successful, because it'll be a great day for Texas.

WALLACE: Take politics, take money out.

Mr. HILL: Out, out, out!

(*Announcements*)

STATE OF MINNESOTA
Office of the Attorney General
[Name and Address Omitted In Printing]

January 26, 1999

Ms. Heddy Gold
CBS News
524 West 57th Street
New York, NY 10019

VIA FACSIMILE AND UNITED STATES MAIL

Dear Ms. Gold:

I request permission to reproduce a transcript of the "Justice for Sale?" portion of the November 1, 1998, *60 Minutes* program for the limited purpose of offering it as an exhibit in connection with my motion for summary judgment in the case of *Republican Party of Minnesota, et al., vs. Verna Kelly, et al.* In this case, the Republican Party is suing to enjoin enforcement of those provisions Canon 5 of the Minnesota Code of Judicial Conduct that prohibit judicial candidates from engaging in certain campaign activities. The Minnesota Attorney General represents the defendants, the Minnesota Board of Judicial Standards and the Minnesota Lawyers Professional Responsibility

Board. I believe the transcript I am asking to reproduce provides a good description of some of the problems that could arise if Minnesota's Canon 5 was declared to be unconstitutional.

Since the deadline for submission of my motion and supporting materials is January 28, 1999, I request your consideration of this request at your earliest convenience. Thank you very much for your consideration of this matter.

Very truly yours,

/s/ Thomas C. Vasaly
THOMAS C. VASALY
Assistant Attorney General
Health & Licensing Section

(651) 297-5950

[1/28/99

Dear Mr. Vasaly,

CBS News grants permission for the use of the *60 MINUTES* transcript, as outlined above only.

/s/ Heddy Gold]

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA, THIRD DIVISION

[Caption Omitted In Printing]

Filed March 12, 1999

CANONS OF JUDICIAL ETHICS.

PREAMBLE.

In addition to the Canons for Professional Conduct of Lawyers which it has formulated and adopted, the American Bar Association, mindful that the character and conduct of a judge should never be objects of indifference, and that declared ethical standards tend to become habits of life, deems it desirable to set forth its views respecting those principles which should govern the personal practice of members of the judiciary in the administration of their office. The Association accordingly adopts the following Canons, the spirit of which it suggests as a proper guide and reminder for judges, and as indicating what the people have a right to expect from them.

ANCIENT PRECEDENTS.

"And I charged your judges at that time, saying Hear the causes between your brethren, and judge righteously between every man and his brother, and the stranger that is with him.

"Ye shall not respect persons in judgment; but ye shall hear the small as well as the great; ye shall not be afraid of the face of man; for the judgment is God's; and the cause that is too hard for you, bring it unto me, and I will hear it." – *Deuteronomy*, I. 16-17.

"Thou shalt not wrest judgment; thou shalt not respect persons, neither take a gift; for a gift doth blind the eyes of the wise, and pervert the words of the righteous." – *Deuteronomy*, XVI. 10.

"We will not make any justicinries, constables, sheriffs or bailiffs, but from those who understand the law of the realm and are well disposed to observe it." – *Magna Charta*, XLV.

"Judges ought to remember that their office is *jus dicere* not *jus dare*; to interpret law, and not to make law, or give law.". . . .

"Judges ought to be more learned that witty; more reverend than plausible; and more advised than confident. Above all things, integrity is their portion and proper virtue.". . . .

"Patience and gravity of hearing is an essential part of justice; and an over speaking judge is no well-tuned cymbal. It is no grace to a judge first to find that which he might have heard in due time from the Bar, or to show quickness of conceit in cutting off evidence or counsel too short; or to prevent information by questions though pertinent.". . . .

"The place of justice is a hallowed place; and therefore not only the Bench, but the foot pace and precincts and purpose thereof ought to be preserved without scandal and corruption.". . . . – *Bacon's Essay "of Judicature."*

Judicial Canon 1. Relations of the Judiciary.

The assumption of the office of judge casts upon the incumbent duties in respect to his personal conduct

which concern his relation to the state and its inhabitants, the litigants before him, the principles of law, the practitioners of law in his court, and the witnesses, jurors and attendants who aid him in the administration of its functions.

Opinion 166 – It is improper for a judge to participate in a radio program sponsored by a commercial concern, in which legal advice is given.

Judicial Canon 2. The Public Interest

Courts exist to promote justice, and thus to serve the public interest. Their administration should be speedy and careful. Every judge should at all times be alert in his rulings and in the conduct of the business of the court, so far as he can, to make it useful to litigants and to the community. He should avoid unconsciously falling into the attitude of mind that the litigants are made for the courts instead of the courts for the litigants.

Opinion 180 – A judge should not use or permit others to use the power or prestige of his office to promote his candidacy for reelection or to further the success of a political party.

Judicial Canon 3. Constitutional Obligations

It is the duty of all judges in the United States to support the federal Constitution and that of the state whose laws they administer; in so doing, they should

fearlessly observe and apply fundamental limitations and guarantees.

Judicial Canon 4. Avoidance of Impropriety.

A judge's official conduct should be free from impropriety and the appearance of impropriety; he should avoid infractions of law; and his personal behavior, not only upon the Bench and in the performance of judicial duties, but also in his every day life, should be beyond reproach.

Opinion 15 – In some situations a judge may testify as to the good character of a defendant in a criminal trial over which he is not presiding.

Opinion 52 – It is improper for a judge to conduct a newspaper column of comment on current news items and matters of general interest.

Opinion 67 – It is improper for a judge to permit a broadcast of court proceedings.

Opinion 80 – It is improper for a judge to accept a loan from a lawyer on a second mortgage having no investment value.

Opinion 166 – It is improper for a judge to participate in a radio program sponsored by a commercial concern, in which legal advice is given.

Opinion 248 – A judge should not allow his name to be used for solicitation of charitable contributions.

See also *Opinion [illegible]*

Judicial Canon 5. Essential Conduct.*

A judge should be temperate, attentive, patient, impartial, and since he is to administer the law and apply it to the facts, he should be studious of the principles of the law and diligent in endeavoring to ascertain the facts.

Judicial Canon 6. Industry.

A judge should exhibit an industry and application commensurate with the duties imposed upon him.

Judicial Canon 7. Promptness.

A judge should be prompt in the performance of his judicial duties, recognizing that the time of litigants, jurors and attorneys is of value and that habitual lack of punctuality on his part justifies dissatisfaction with the administration of the business of the court.

Judicial Canon 8. Court Organization

A judge should organize the court with a view in the prompt and convenient dispatch of its business and he should not tolerate abuses and neglect by clerks, and other assistants who are sometimes prone to presume too much upon his good natured acquiescence by reason of friendly association with him.

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* In this Canon, as well as in Judicial Canons, 6, 7, 8, 9, 10, 11, 13, 14, 15, 16, 17, 21, 25, 26, 28, 32, by the amendment of September 30, 1957 the first word "He" was changed to "A judge."

It is desirable too, where the judicial system permits, that he should cooperate with other judges of the same court, and in other courts, as members of a single judicial system, to promote the more satisfactory administration of justice.

Judicial Canon 9. Consideration for Jurors and Others.

A judge should be considerate of jurors, witnesses and others in attendance upon the court.

Judicial Canon 10. Courtesy and Civility.

A judge should be courteous to counsel, especially in those who are young and inexperienced, and also to all others appearing or concerned in the administration of justice in the court.

A judge should also require, and, so far as his power extends, enforce on the part of clerks, court officers and counsel civility and courtesy to the court and to jurors, witnesses, litigants and others having business in the court.

Judicial Canon 11. Unprofessional Conduct of Attorneys and Counsel.

A judge should utilize his opportunities to criticize and correct unprofessional conduct of attorneys and counselors, brought to his attention; and, if adverse comment is not a sufficient corrective, should send the matter at once to the proper investigating and disciplinary authorities.

Judicial Canon 12. Appointees of the Judiciary and Their Compensation.

Trustees, receivers, masters, referees, guardians and other persons appointed by a judge to aid in the administration of justice should have the strictest probity and impartiality and should be selected with a view, solely to their character and fitness. The power of making such appointments should not be exercised by him for personal or partisan advantage. He should not permit his appointments to be controlled by others than himself. He should also avoid nepotism and undue favoritism in his appointments.

While not hesitating to fix or approve just amounts, he should be most scrupulous in granting or approving compensation for the services or charges of such appointees to avoid excessive allowances, whether or not excepted to or complained of. He cannot rid himself of this responsibility by the consent of counsel.

Judicial Canon 13. Kinship or Influence

A judge should not act in a controversy where a near relative is a party; he should not suffer his conduct to justify the impression that any person can improperly influence him or unduly enjoy his favor, or that he is affected by the kinship, rank, position or influence of any party or other person.

Opinion [Illegible] –
A judge should not permit the firm of which he was formerly an active member to continue using his name.

Opinion 200 – While a judge should, when feasible, avoid sitting without colleagues in a case in which a near relative is counsel, a lawyer need not refuse to accept employment in a case because it may be heard before a near relative.

See also A.B.A. Report for 1921, pp. 69-70.

Judicial Canon 14. Independence.

A judge should not be swayed by parties on demands, public clamor or considerations of personal popularity or notoriety, nor be apprehensive of unjust critism.

Judicial Canon 15. Interference in Conduct of Trial.

A judge may properly intervene in a trial of a case to promote expedition, and prevent unnecessary waste of time, or to clear up some obscurity, but he should bear in mind that his undue interference, impatience, or participation in the examination of witnesses, or a severe attitude on his part toward witnesses, especially those who are excited or terrified by the unusual circumstances of a trial, may tend to prevent the proper presentation of the cause, or the ascertainment of the truth in respect thereto.

Conversation between the judge and counsel in court is often necessary, but the judge should be studious to avoid controversies which are apt to obscure the merits of

the dispute between litigants and lead to its unjust disposition. In addressing counsel, litigants, or witnesses, he should avoid a controversial manner or tone.

A judge should avoid interruptions of counsel in their arguments except to clarify his mind as to their positions, and he should not be tempted to the unnecessary display of learning or a premature judgment.

Judicial Canon 16. Ex parte Applications.

A judge should discourage *ex parte* hearings of applications for injunctions and receiverships where the order may work detriment to absent parties; he should act, upon such *ex parte* applications only where the necessity for quick action is clearly shown; if this be demonstrated, then he should endeavor to communicate the effect of the absence of opposing counsel by a scrupulous cross-examination and investigation as to the facts and the principles of law on which the application is based, granting relief only when fully satisfied that the law permits it and the emergency demands it. He should remember that an injunction is a limitation upon the freedom of action of defendants and should not be granted lightly or inadvisedly. One applying for such relief must sustain the burden of showing clearly its necessity and this burden is increased in the absence of the party whose freedom of action is sought to be restrained even though only temporarily.

Judicial Canon 17. Ex parte Communications.

A judge should not permit private interviews, arguments or communications designed to influence his judicial action, where interests to be affected thereby are not represented before him, except in cases where provision is made by law for *ex parte* application.

While the conditions under which briefs of argument are to be received are largely matters of local rule or practice, he should not permit the contents of such briefs presented to him to be concealed from opposing counsel. Ordinarily all communications of counsel to the judge intended or calculated to influence action should be made known to opposing counsel.

Judicial Canon 18. Continuances.

Delay in the administration of justice is a common cause of complaint; counsel are frequently responsible for this delay. A judge, without being arbitrary or forcing cases unreasonably or unjustly to trial when unprepared, to the detriment of parties, may well endeavor to hold counsel to a proper appreciation of their duties to the public interest, to their own clients, and to the adverse party and his counsel, so as to enforce due diligence in the dispatch of business before the court.

Judicial Canon 19. Judicial Opinions.

In disposing of controverted cases a judge should indicate the reasons for his action in an opinion showing that he has not disregarded or overlooked serious arguments of counsel. He thus shows his full understanding

of the case, avoids the suspicion of arbitrary conclusion, promotes confidence in his intellectual integrity and may contribute useful precedent to the growth of the law.

It is desirable that Courts of Appeal in reversing cases and granting new trials should so indicate their views on questions of law argued before them and necessarily arising in the controversy that upon the new trial counsel may be aided to avoid the repetition of erroneous positions of law and shall not be left in doubt by the failure of the court to decide such questions.

But the volume of reported decisions is such and is so rapidly increasing that in writing opinions which are to be published judges may well take this fact into consideration, and curtail them accordingly, without substantially departing from the principles stated above.

It is of high importance that judges constituting a court of last resort should use effort and self-restraint to promote solidarity of conclusion and the consequent influence of judicial decision. A judge should not yield to pride of opinion or value more highly his individual reputation than that of the court to which he should be loyal. Except in case of conscientious difference of opinion on fundamental principle, dissenting opinions should be discouraged in courts of last resort.

Judicial Canon 20. Influence of Decisions Upon the Development of the Law.

A judge should be mindful that his duty is the application of general law to particular instances, that ours is a government of law and not of man, and that he violates his duty as a minister of justice under such a system if he

seeks to do what he may personally consider substantial justice in a particular case and disregards the general law as he knows it to be binding on him. Such action may become a precedent unsettling accepted principles and may have detrimental consequences beyond the immediate controversy. He should administer his office with a due regard to the integrity of the system of the law itself, remembering that he is not a depositary of arbitrary power, but a judge under the sanction of law.

Judicial Canon 21. Idiosyncrasies and Inconsistencies.

Justice should not be mandated by the individual idiosyncrasies of those who administer it. A judge should adopt the usual and expected method of doing justice, and not seek to be extreme or peculiar in his judgments, or spectacular or sensational in the conduct of the court. Though vested with discretion in the imposition of mild or severe sentences he should not compel persons brought before him to submit to some humiliating act or discipline of his own devising, without authority of law, because he thinks it will have a beneficial corrective influence.

To imposing sentence he should endeavor to conform to a reasonable standard of punishment and should not seek popularity or publicity either by exceptional severity or undue leniency.

Opinion 212 – Broadcasting of court proceedings is improper.

Judicial Canon 22. Review.

In order that a litigant may secure the full benefit of the right of review accorded to him by law, a trial judge should scrupulously grant in the defeated party opportunity to present the questions arising upon the trial exactly as they arose, were presented, and decided by full and fair bill of exceptions or otherwise; any failure in this regard on the part of the judge is peculiarly worthy of condemnation because the wrong done may be irremediable.

Judicial Canon 23. Legislative.

A judge has exceptional opportunity to observe the operation of statutes, especially those relating to practice, and to ascertain whether they tend to impede the just disposition of controversy; and he may well contribute to the public interest by advising those having authority to remedy defects of procedure, of the result of his observation and experience.

Judicial Canon 21. [sic] Inconsistent Obligations

A judge should not accept inconsistent duties; nor incur obligations pecuniary or otherwise, which will in any way interfere or appear to interfere with his devotion to the expeditious and proper administration of his official functions.

Opinion 22 – It is improper for a state judge to hold membership in the National Guard or Reserve Officers' Corps. Overruled *Opinion 215.*

Opinion 53 – It is improper for a judge to conduct a newspaper column of comment on current news items and matters of general interest.

Opinion 80 – The making of a loan by a lawyer to a judge on second mortgage having no investment value, is improper.

Opinion 215 – A judge may properly be a member of the National Guard or the Officer Reserve Corps. *Opinion 22* overruled.

Opinion 242 – A city justice judge whose jurisdiction is limited to trials of misdemeanors and examination of felony cases may not, ethically, represent defendants in criminal cases in the Circuit Court.

See also under Professional Canon 11.

Judicial Canon 25. Business Promotions and Solicitations for Charity.

A judge should avoid giving ground for any reasonable suspicion that he is utilizing the power or prestige of his office to persuade or coerce others to patronize or contribute, either to the success of private business ventures, or to charitable enterprises. He should, therefore, not enter into such private business, or pursue such a course of conduct, as would justify such suspicion, nor use the power of his office or the influence of his name to promote the business interests of others; he should not solicit for charities nor should he enter into any business relation which, in the normal course of events reasonably

to be expected, might bring his personal interest into conflict with the impartial performance of his official duties.

Opinion [Illegible]
– A judge should not permit the firm of which he was formerly an active member to continue using his name.

Opinion 166 – It is improper for a judge to participate in a radio program sponsored by a commercial concern, in which legal advice is given.

Opinion 2[illegible]
– A judge should not allow his name to be used for solicitation of charitable contributions.

Opinion [Illegible]
– A judge may not serve as director of a bank.

Judicial Canon 26, Personal Investments and Relations.

A judge should abstain from making personal investments in enterprises which are apt to be involved in litigation in the court; and, after his accession to the Bench, he should not retain such investments previously made, longer than a period sufficient to enable him to dispose of them without serious loss. It is desirable that he should, so far as reasonably possible, refrain from all relations which would normally tend to arouse the suspicion that such relations warp or bias his judgment, or prevent his impartial attitude of mind in the administration of his judicial duties.

He should not utilize information, coming to him in a judicial capacity, for purposes of speculation; and it detracts from the public confidence in his integrity and the soundness of his judicial judgment for him at any time to become a speculative investor upon the hazard of margin.

Opinion 200 – While a judge should, when feasible, avoid sitting without colleagues in a case in which a near relative is counsel, a lawyer need not refuse to accept employment in a case because it may be heard before a near relative.

Judicial Canon 27. Executorships and Trusteeships

While a judge is not disqualified from holding executorships or trusteeships, he should not accept or continue to hold any fiduciary or other position if the holding of it would interfere or seem to interfere with the proper performance of his judicial duties, or if the business interests of those represented require investments in enterprises that are not to come before him judicially, or to be involved in questions of law to be determined by him.

Judicial Canon 28. Partisan Politics.*

While entitled to entertain his personal views of political questions, and while not required to surrender

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* Canon 28 of the Judicial Ethics was amended at the Fifty-sixth Annual Meeting, in 1933. The original Canon was worded as follows:

his rights or opinions as a citizen, it is inevitable that suspicion of being warped by political bias will attach to a judge who becomes the active promoter of the interests of one political party as against another. He should avoid making political speeches, making or soliciting payment of assessments or contributions to party funds, the public endorsement of candidates for political office and participation in party conventions.

He should neither accept nor retain a place on any party committee nor act as party leader, nor engage generally in partisan activities. Where, however, it is necessary for judges to be nominated and elected as candidates of a political party, nothing herein contained shall prevent the judge from attending or speaking at political gatherings, or from making contributions to the campaign funds of the party that has nominated him and seeks his election or re-election.

Opinion 113 – A judge should not appear at political meetings and indicate support of candidates for office;

While entitled to entertain his personal views of political questions, and while not required to surrender his rights or opinions as a citizen, it is inevitable that suspicion of being warped by political bias will attach to a judge who becomes the active promoter of the interests of one political party as against another. He should avoid making political speeches, making or soliciting payment of assessments or contributions to party funds, the public endorsement of candidates for political office and participation in party conventions.

It was amended September 20, 1950 by adding the last sentence in the second paragraph.

nor should he permit his wife to give political teas.

Opinion [Illegible] –
A judge should not make political speeches, endorse candidates, hold lace on party committee, or engage generally in partisan politics. He cannot act as party treasurer.

Opinion 259 – Contributions to and participation in campaign by judges seeking election or re-election.

Judicial Canon 29. Self-Interest.

A judge should abstain from performing or taking part in any judicial act in which his personal interests are involved. If he has personal litigation in the court of which he is judge, he need not resign his judgeship on that account, but he should, of course, refrain from any judicial act in such a controversy.

Opinion 170 – A judge may not perform any act involving the exercise of judicial discretion in matters in which a corporation of which he is a stockholder is a party litigant.

Judicial Canon 30. Candidacy for Office.*

A candidate for judicial position should not make or suffer others to make for him, promises of conduct in

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* Canon 30 of Judicial Ethics was amended at the Fifty-sixth Annual Meeting, in 1933. The original Canon was worded as follows:

office which appeal to the cupidity or prejudices of the appointing or electing power; he should not announce in advance his conclusions of law on disputed issues to secure class support, and he should do nothing while a candidate to create the impression that if chosen, he will administer his office with bias partiality or improper discrimination.

While holding a judicial position he should not become an active candidate either at a party primary or at a general election for any office other than a judicial office. If a judge should decide to become a candidate for any office not judicial, he should resign in order that it

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A candidate for judicial position should not make or suffer others to make for him, promises of conduct, in office which appeal to the cupidity or prejudices of the appointing or electing power; he should not announce in advance his conclusions of law on disputed issues to secure class support, and he should do nothing while a candidate to create the impression that if chosen, he will administer his office with bias, partiality or improper discrimination.

While holding judicial office he should decline nomination to any other place which might reasonably tend to create a suspicion or criticism that the proper performance of his judicial duties is prejudiced or prevented thereby.

If a judge becomes a candidate for any office, he should refrain from all conduct which might tend to arouse reasonable suspicion that he is using the power or prestige of his judicial position to promote his candidacy or the success of his party.

He should not permit others to do anything in behalf of his candidacy which would reasonably lead to such suspicion

cannot be said that he is using the power or prestige of his judicial position to promote his own candidacy or the success of his party.

If a judge becomes a candidate for any judicial office, he should refrain from all conduct which might tend to arouse reasonable suspicion that he is using the power or prestige of his judicial position to promote his candidacy or the success of his party.

He should not permit others to do anything in behalf of his candidacy which would reasonably lead to such suspicion.

Opinion 93 – It is improper for a candidate for judgeship to radiocast opinions on legal problems submitted on his invitation.

Opinion 105 – Judges seeking election or appointment should not solicit the aid of lawyers by letter or otherwise.

Opinion 130 – A judge should not use the power or prestige of his office to promote his candidacy for office by sending out a form letter requesting endorsement.

Opinion 161 – A special or pro tem judge may practice in the court over which he temporarily presides in matters not connected with his special service, where this is contemplated by the local statute.

Opinion 164 – A municipal judge may, without resigning, become a candidate for election in a district judgeship.

Opinion 180 – A judge should not use or permit others to use the power or prestige of his office to promote his candidacy for reelection or to further the success of a political party.

Opinion 193 – A judge should resign judicial office before becoming a candidate for non-judicial office.

Opinion 195 – A county judge should resign before becoming a candidate for office of city commissioner.

Opinion 226 – While lawyers may contribute in the campaign fund of judges whose election they honestly favor, such contribution should in every case be reasonable, and preferably be made to a campaign committee.

Judicial Canon 31. Private Law Practice

In many states the practice of law by one holding judicial position is forbidden. In superior courts of general jurisdiction, it should never be permitted. In inferior courts in some states, it is permitted because the county or municipality is not able to pay adequate living compensation for a competent judge. In such cases one who practices law is in a position of great delicacy and must be scrupulously careful to avoid conduct in his practice whereby he utilizes or seems to utilize his judicial position to further his professional success.

He should not practice in the court in which he is a judge, even when presided over by another judge, or appear therein for himself in any controversy.

If forbidden to practice law, he should refrain from accepting any professional employment while in office.

He may properly act as arbitrator or lecture upon or instruct in law, or write upon the subject, and accept compensation therefor, if such course does not interfere with the due performance of his judicial duties and is not forbidden by some positive provision of law.

Opinion 30 – A public prosecutor in one state may not defend a person accused of crime in another state. (*Judicial Canon 31* applied by analogy.)

Opinion 30 – A prosecutor may not accept private employment in connection with any matter which he investigated in an official capacity. (*Judicial Canon 31* applied by analogy.)

Opinion 62 – It is improper for a judge to conduct a newspaper column of comments on current news items and matters of general interest.

Opinion 66 – Police and juvenile judges in rural communities may defend indigent prisoners in superior courts.

Opinion 110 – An inferior court judge should not exercise his judicial authority in a criminal proceeding which arises out of a matter in which he is also acting as attorney for the complainant.

Opinion 135 – A prosecuting attorney should not represent private litigants in an action based on substantially the

same facts as those which he investigated in an official capacity. (*Judicial Canon 31* applied by analogy.)

Opinion 138 – An inferior court judge who is permitted to practice may accept employment from a person who three years earlier was a defendant in a criminal case in his court.

Opinion 142 – A judge should not practice in a court over which he occasionally presides. It is not proper for the partner of a judge to practice before the court over which he presides.

Opinion 242 – A city police judge whose jurisdiction is limited to trials of misdemeanors and examination of felony cases may not, ethically, represent defendants in criminal cases in the Circuit Court.

Judicial Canon 32. Gifts and Favors.

A judge should not accept any presents or favors from litigants, or from lawyers practicing before him or from others whose interests are likely to be submitted to him for judgment.

Opinion 89 – It is improper for a judge to accept a loan from a lawyer on property which has no investment value.

Opinion 226 – While lawyers may contribute to the campaign fund of judges whose election they honestly favor, such contribution should in every case be reasonable and preferably be made to a campaign committee.

Judicial Canon 33. Social Relations.

It is not necessary to the proper performance of judicial duty that a judge should live in retirement or seclusion; it is desirable that, so far as reasonable attention to the completion of his work will permit, he continue to mingle in social intercourse, and that he should not discontinue his interest in or appearance at meetings of members of the Bar. He should, however, in pending or prospective litigation before him be particularly careful to avoid such action as may reasonably tend to awaken the suspicion that his social or business relations or friendships, constitute an element in influencing his judicial conduct.

Opinion 143 – A judge should not permit the firm of which he was formerly an active member to continue using his name.

Judicial Canon 31. A Summary of Judicial Obligation.

In every particular his conduct should be above reproach. He should be conscientious, studious, thorough, courteous, patient, punctual, just, impartial, fearless of public clamor, regardless of public praise, and indifferent to private political or partisan influences; he should administer justice according to law, and deal with his appointments as a public trust; he should not allow other affairs or his private interests to interfere with the prompt and proper performance of his judicial duties, nor should he administer the office for the purpose of advancing his personal ambitions or increasing his popularity.

Opinion 62 – It is improper for a judge to conduct a newspaper column of comment on current news items and matters of general interest.

Opinion 67 – It is improper for a judge to permit a radio broadcast of court proceedings.

Opinion 166 – It is improper for a judge to participate in a radio program sponsored by a commercial concern, in which legal advice is given.

See also *Opinion 130.*

Judicial Canon 35. Improper Publicizing of Court Proceedings.*

Proceedings in court should be conducted with fitting dignity and decorum. The taking of photographs in the court room, during sessions of the court or recesses between sessions, and the broadcasting or televising of court proceedings are calculated to detract from the essential dignity of the proceedings, distract the witness in giving his testimony, degrade the court and create misconceptions with respect thereto in the mind of the public and should not be permitted.

Provided that, this restriction shall not apply in the broadcasting or televising under the supervision of the court, of such portions of naturalization proceedings (other than the interrogation of applicants) as are

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* Adopted September 30, 1937; amended September 1952 by adding "or televising" and "distract the witness in giving his testimony," in the first paragraph, and by adding the second paragraph.

designed and carried out exclusively as a ceremony for the purpose of publicly demonstrating in an impressive manner the essential dignity and the serious nature of naturalization.

Opinions 67, 212 – Broadcasting of court proceedings is improper.

Judicial Canon 36. Conduct of Court Proceedings.*

Proceedings in court should be so conducted as to reflect the importance and seriousness of the inquiry to ascertain the truth.

The oath should be administered to witnesses in a manner calculated to impress them with the importance and solemnity of their promise to adhere to the truth. Each witness should be sworn separately and impressively at the bar or the court, and the clerk should be required to make a formal record of the administration of the oath, including the name of the witness.

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA, THIRD DIVISION

[Caption Omitted In Printing]

Filed March 12, 1999

CANON 5[2]

A JUDGE OR JUDICIAL CANDIDATE SHALL REFRAIN FROM INAPPROPRIATE POLITICAL ACTIVITY

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[2] Introductory Note to Canon 5: There is wide variation in the methods of judicial selection used, both among jurisdictions and within the jurisdictions themselves. In a given state, judges may be selected by one method initially, retained by a different method, and selected by still another method to fill interim vacancies.

According to figures complied in 1987 by the National Center for State Courts, 32 states and the District of Columbia use a merit selection method (in which an executive such as a governor appoints a judge from a group of nominees selected by a judicial nominating commission) to select judges in the state either initially or to fill an interim vacancy. Of those 33 jurisdictions, a merit selection method is used in 18 jurisdictions to choose judges of courts of last resort, in 13 jurisdictions to choose judges of intermediate appellate courts, in 12 jurisdictions to choose judges of general jurisdiction courts and in 5 jurisdictions to choose judges of limited jurisdiction courts.

Methods of judicial selection other than merit selection include nonpartisan election (10 states use it for initial selection at all court levels, another 10 states use it for initial selection for at least one court level) and partisan election (8 states use it for initial selection at all court levels, another 7 states use it for initial selection for at least one level). In a small minority of the states, judicial selection methods include executive or legislative appointment (without nomination of a group of potential appointees by a judicial nominating commission) and court selection. In addition, the federal judicial system utilizes an executive appointment method. See State Court Organization 1987 (National Center for State Courts, 1988).

A. ***All Judges and Candidates.***

(1) Except as authorized in section 5B(2), 5C(1) and 5C(3), a judge or a candidate* for election or appointment to judicial office shall not:

(a) act as a leader or hold an office in a political organization*;

(b) publicly endorse or publicly oppose another candidate for public office;

(c) make speeches on behalf of a political organization;

(d) attend political gatherings; or

(e) solicit funds for, pay an assessment to or make a contribution to a political organization or candidate, or purchase tickets for political party dinners or other functions.

Commentary. – A judge or candidate for judicial office retains the right to participate in the political process as a voter.

Where false information concerning a judicial candidate is made public, a judge or another judicial candidate having knowledge of the facts is not prohibited by Section 5A(1) from making the facts public.

Section 5A(1)(a) does not prohibit a candidate for elective judicial office from retaining during candidacy a public office such as county prosecutor, which is not "an office in a political organization."

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* See Terminology, "candidate."

* See Terminology, "political organization."

Section 5A(1)(b) does not prohibit a judge or judicial candidate from privately expressing his or her views on judicial candidates or other candidates for public office.

A candidate does not publicly endorse another candidate for public office by having that candidate's name on the same ticket.

(2) A judge shall resign from judicial office upon becoming a candidate* for a non-judicial office either in a primary or in a general election, except that the judge may continue to hold judicial office while being a candidate for election to or serving as a delegate in a state constitutional convention if the judge is otherwise permitted by law* to do so.

(3) A candidate* for a judicial office:

(a) shall maintain the dignity appropriate to judicial office and act in a manner consistent with the integrity and independence of the judiciary, and shall encourage members of the candidate's family* to adhere to the same standards of political conduct in support of the candidate as apply to the candidate;

Commentary. – Although a judicial candidate must encourage members of his or her family to adhere to the same standards of political conduct in support of the candidate that apply to the candidate, family members are free to participate in other political activity.

(b) shall prohibit employees and officials who serve at the pleasure of the candidate,* and

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* See Terminology, "candidate."

* See Terminology, "law."

* See Terminology, "member of the candidate's family."

shall discourage other employees and officials subject to the candidate's direction and control from doing on the candidate's behalf what the candidate is prohibited from doing under the Sections of this Canon;

(c) except to the extent permitted by Section 5C(2), shall not authorize or knowingly* permit any other person to do for the candidate* what the candidate is prohibited from doing under the Sections of this Canon;

(d) shall not:

(i) make pledges or promises of conduct in office other than the faithful and impartial performance of the duties of the office;

(ii) make statements that commit or appear to commit the candidate with respect to cases, controversies or issues that are likely to come before the court; or

(iii) knowingly* misrepresent the identity, qualifications, present position or any other fact concerning the candidate or an opponent;

Commentary. – Section 5A(3)(d) prohibits a candidate for judicial office from making statements that appear to commit the candidate regarding cases, controversies or issues likely to come before the court. As a corollary, a candidate should emphasize in any public statement the candidate's duty to uphold the law regardless of his or her personal views. See also Section 3B(9), the general rule on public comment by judges.

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* See Terminology, "knowingly."

* See Terminology, "candidate."

Section 5A(3)(d) does not prohibit a candidate from making pledges or promises respecting improvements in court administration. Nor does this Section prohibit an incumbent judge from making private statements to other judges or court personnel in the performance of judicial duties. This Section applies to any statement made in the process of securing judicial office, such as statements to commissions charged with judicial selection and tenure and legislative bodies confirming appointment. See also Rule 8.2 of the ABA Model Rules of Professional Conduct.

(e) may respond to personal attacks or attacks on the candidate's record as long as the response does not violate Section 5a(3)(d).

B. *Candidates Seeking Appointment to Judicial or Other Governmental Office.*

(1) A candidate* for appointment to judicial office or a judge seeking other governmental office shall not solicit or accept funds, personally or through a committee or otherwise, to support his or her candidacy.

(2) A candidate* for appointment to judicial office or a judge seeking other governmental office shall not engage in any political activity to secure the appointment except that:

(a) such persons may:

(i) communicate with the appointing authority, including any selection or nominating commission or other agency designated to screen candidates;

* See Terminology, "candidate."

(ii) seek support or endorsement for the appointment from organizations that regularly make recommendations for reappointment or appointment to the office, and from individuals to the extent requested or required by those specified in Section 5B(2)(a); and

(iii) provide to those specified in Sections 5B(2)(a)(i) and 5B(2)(a)(ii) information as to his or her qualifications for the office;

(b) a non-judge candidate* for appointment to judicial office may, in addition, unless otherwise prohibited by law*:

(i) retain an office in a political organization,*

(ii) attend political gatherings, and

(iii) continue to pay ordinary assessments and ordinary contributions to a political organization or candidate and purchase tickets for political party dinners or other functions.

Commentary. – Section 5B(2) provides a limited exception to the restrictions imposed by Sections 5A(1) and 5D. Under Section 5B(2), candidates seeking reappointment to the same judicial office or appointment to another judicial office or other governmental office may apply for the appointment and seek appropriate support.

* See Terminology, "candidate."

* See Terminology, "law."

* See Terminology, "political organization."

Although under Section 5b(2) non-judge candidates seeking appointment to judicial office are permitted during candidacy to retain office in a political organization, attend political gatherings and pay ordinary dues and assessments, they remain subject to other provisions of this Code during candidacy. See Sections 5B(1), 5B(2)(a), 5E and Application Section.

C. *Judges and Candidates Subject to Public Election.*

(1) A judge or a candidate* subject to public election* may, except as prohibited by law*:

(a) at any time

(i) purchase tickets for and attend political gatherings;

(ii) identify himself or herself as a member of a political party; and

(iii) contribute to a political organization;*

(b) when a candidate for election

(i) speak to gatherings on his or her own behalf;

(ii) appear in newspaper, television and other media advertisements supporting his or her candidacy;

* See Terminology, "candidate."

* See Terminology, "public election."

* See Terminology, "law."

* See Terminology, "political organization."

(iii) distribute pamphlets and other promotional campaign literature supporting his or her candidacy; and

(iv) publicly endorse or publicly oppose other candidates for the same judicial office in a public election in which the judge or judicial candidate is running.

Commentary. – Section 5C(1) permits judges subject to election at any time to be involved in limited political activity. Section 5D, applicable solely to incumbent judges, would otherwise bar this activity.

(2) A candidate* shall not personally solicit or accept campaign contributions or personally solicit publicly stated support. A candidate may, however, establish committees of responsible persons to conduct campaigns for the candidate through media advertisements, brochures, mailings, candidate forms and other means not prohibited by law. Such committees may solicit and accept reasonable campaign contributions, manage the expenditure of funds for the candidate's campaign and obtain public statements of support for his or her candidacy. Such committees are not prohibited from soliciting and accepting reasonable campaign contributions and public support from lawyers. A candidate's committees may solicit contributions and public support for the candidate's campaign no earlier than [one year] before an election and no later than [90] days after the last election in which the candidate participates during the election year. A candidate shall not use or permit the use of campaign contributions for the private benefit of the candidate or others.

* See Terminology, "candidate."

Commentary. – Section 5C(2) permits a candidate, other than a candidate for appointment, to establish campaign committees to solicit and accept public support and reasonable financial contributions. At the start of the campaign, the candidate must instruct his or her campaign committees to solicit or accept only contributions that are reasonable under the circumstances. Though not prohibited, campaign contributions of which a judge has knowledge, made by lawyers or others who appear before the judge, may be relevant to disqualification under Section 3E.

Campaign committees established under Section 5C(2) should manage campaign finances responsibly, avoiding deficits that might necessitate post-election fund-raising, to the extent possible.

Section 5C(2) does not prohibit a candidate from initiating an evaluation by a judicial selection commission or bar association, or, subject to the requirements of this Code, from responding to a request for information from any organization.

(3) Except as prohibited by law*, a candidate* for judicial office in a public election* may permit the candidate's name: (a) to be listed on election materials along with the names of other candidates for elective public office, and (b) to appear in promotions of the ticket.

Commentary. – Section 5C(3) provides a limited exception to the restrictions imposed by Section 5A(1).

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* See Terminology, "law."

* See Terminology, "candidate."

* See Terminology, "public election."

D. *Incumbent Judges.* A judge shall not engage in any political activity except (i) as authorized under any other Section of this Code, (ii) on behalf of measures to improve the law,* the legal system or the administration of justice, or (iii) as expressly authorized by law.

Commentary. – Neither Section 5D nor any other section of the Code prohibits a judge in the exercise of administrative functions from engaging in planning and other official activities with members of the executive and legislative branches of government. With respect to a judge's activity on behalf of measures to improve the law, the legal system and the administration of justice, see Commentary to Section 4B and Section 4C(1) and its Commentary.

E. *Applicability.* Canon 5 generally applies to all incumbent judges and judicial candidates.* A successful candidate, whether or not an incumbent, is subject to judicial discipline for his or her campaign conduct; an unsuccessful candidate who is a lawyer is subject to lawyer discipline for his or her campaign conduct. A lawyer who is a candidate for judicial office is subject to [Rule 8.2(b) of the ABA Model Rules of Professional Conduct]. (An adopting jurisdiction should substitute a reference to its applicable rule.)

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* See Terminology, "law."

* See Terminology, "candidate."

Application of the Code of Judicial Conduct

A. Anyone, whether or not a lawyer, who is an officer of a judicial system[3] and who performs judicial functions, including an officer such as a magistrate,

* * *

[3] Applicability of this Code to administrative law judges should be determined by each adopting jurisdiction. Administrative law judges generally are affiliated with the executive branch of government rather than the judicial branch and each adopting jurisdiction should consider the unique characteristics of particular administrative law judge positions in adopting and adapting the Code for administrative law judges. See, e.g., Model Code of Judicial Conduct for Federal Administrative Law Judges, endorsed by the National Conference of Administrative Law Judges in February 1989.

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA, THIRD DIVISION

[Caption Omitted In Printing]

Filed March 12, 1999

CODE OF JUDICIAL CONDUCT

Adopted by the Supreme Court February 20, 1974

Canon

1. A Judge Should Uphold the Integrity and Independence of the Judiciary.

2. A Judge Should Avoid Impropriety and the Appearance of Impropriety in All His Activities.

3. A Judge Should Perform the Duties of His Office Impartially and Diligently.

4. A Judge May Engage in activities to Improve the Law, the Legal System, Judicial Administration, and the Administration of Justice.

5. A Judge Should Regulate His Extra-Judicial Activities to Minimize the Risk of Conflict with His Judicial Duties.

6. A Judge Should Regularly File Reports of Compensation Received for Quasi-Judicial and Extra-Judicial Activities.

7. A Judge Should Refrain from Political Activity Inappropriate to His Judicial Office.

Compliance with the Code of Judicial Conduct.

Effective Date of Compliance.

Canon 1

A JUDGE SHOULD UPHOLD THE INTEGRITY AND INDEPENDENCE OF THE JUDICIARY

An independent and honorable judiciary is indispensable to justice in our society. A judge should participate in establishing, maintaining, and enforcing, and should himself observe, high standards of conduct so that the integrity and independence of the judiciary may be preserved. The provisions of this Code should be construed and applied to further that objective.

Canon 2

A JUDGE SHOULD AVOID IMPROPRIETY AND THE APPEARANCE OF IMPROPRIETY IN ALL HIS ACTIVITIES

A. A judge should respect and comply with the law and should conduct himself at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary.

B. A judge should not allow his family, social, or other relationships to influence his judicial conduct or judgment. He should not lend the prestige of his office to advance the private interests of others; nor should he convey or permit others to convey the impression that they are in a special position to influence him. He should not testify voluntarily as a character witness.

Canon 3

A JUDGE SHOULD PERFORM THE DUTIES OF HIS OFFICE IMPARTIALLY AND DILIGENTLY

The judicial duties of a judge take precedence over all his other activities. His judicial duties include all the duties of his office prescribed by law. In the performance of these duties, the following standards apply:

A. Adjudicative Responsibilities.

(1) A judge should be faithful to the law and maintain professional competence in it. He should be unswayed by partisan interests, public clamor, or fear of criticism.

(2) A judge should maintain order and decorum in proceedings before him.

(3) a judge should be patient, dignified, and courteous to litigants, jurors, witnesses, lawyers, and others with whom he deals in his official capacity, and should require similar conduct of lawyers, and of his staff, court officials, and others subject to his direction and control.

(4) A judge should accord to every person who is legally interested in a proceeding, or his lawyer, full right to be heard according to law, and, except as authorized by law, neither initiate nor consider ex parte or other communications concerning a pending or impending proceeding. A judge, however, may obtain the advice of a disinterested expert on the law applicable to a proceeding before him if he gives notice to the parties of the person consulted and the substance of the advice, and affords the parties reasonable opportunity to respond.

(5) A judge should dispose promptly of the business of the court.

(6) A judge should abstain from public comment about a pending or impending proceeding in any court, and should require similar abstention on the part of court personnel subject to his direction and control. This subsection does not prohibit judges from making public statements

* * *

B. **Expense Reimbursement.** Expense reimbursement should be limited to the actual cost of travel, food, and lodging reasonably incurred by the judge and, where appropriate to the occasion, by his spouse. Any payment in excess of such an amount is compensation.

C. **Public Reports.** a judge should report the date, place, and nature of any activity for which he received compensation, and the name of the payor and the amount of compensation so received. Compensation or income of a spouse attributed to the judge by operation of a community property law is not extrajudicial compensation to the judge. His report should be made annually, on or before the first day in May of each year, and should be filed as a public document in the office of the State Court Administrator. Canon 6C shall become effective on May 1, 1975.

Canon 7

A JUDGE SHOULD REFRAIN FROM POLITICAL ACTIVITY INAPPROPRIATE TO HIS JUDICIAL OFFICE

A. **Political Conduct In General.**

(1) A judge or a candidate for election to judicial office should not:

(a) act as a leader or hold any office in a political organization;

(b) make speeches for a political organization or candidate or publicly endorse a candidate for public office;

(c) solicit funds for or pay an assessment or make a contribution to a political organization or candidate, attend political gatherings, or purchase tickets for political party dinners, or other functions, except as authorized in subsection A(2).

(2) a judge holding an office filled by public election between competing candidates, or a candidate for such office, may accept invitations to attend and speak on his own behalf at other than partisan political gatherings during the year in which he is a candidate for election or reelection.

(3) A judge should resign his office when he becomes a candidate either in a party primary or in a general election for a non-judicial office, except that he may continue to hold his judicial office while being a candidate for election to or serving as a delegate in a state constitutional convention, if he is otherwise permitted by law to do so.

(4) A judge should not engage in any other political activity except on behalf of measures to improve the law, the legal system, judicial administration, or the administration of justice.

B. **Campaign Conduct.**

(1) A candidate, including an incumbent judge, for a judicial office that is filled either by public

election between competing candidates or on the basis of a merit system election:

(a) should maintain the dignity appropriate to judicial office, and should encourage members of his family to adhere to the same standards of political conduct that apply to him;

(b) should prohibit public officials or employees subject to his direction or control from doing for him what he is prohibited from doing under this Canon; and except to the extent authorized under subsection B(2), or B(3), he should not allow any other person to do for him what he is prohibited from doing under this Canon;

(c) should not make pledges or promises of conduct in office other than the faithful and impartial performance of the duties of the office; announce his views on disputed legal or political issues; or misrepresent his identity, qualifications, present position, or other fact.

(2) A candidate, including an incumbent judge, for a judicial office that is filled by public election between competing candidates should not himself solicit or accept campaign funds, or solicit publicly stated support, but he may establish committees of responsible persons to secure and manage the expenditure of funds for his campaign and to obtain public statements of support for his candidacy. Such committees are not prohibited from soliciting campaign contributions and public support from lawyers. A candidate should not use or permit the use of campaign contributions for the private benefit of himself or members of his family.

(3) an incumbent judge who is a candidate for retention in or re-election to office without a competing candidate, and whose candidacy has drawn active opposition, may campaign in response thereto and may obtain publicly stated support and campaign funds in the manner provided in subsection B(2).

Compliance with the Code of Judicial Conduct

Anyone, whether or not a lawyer, who is an officer of a judicial system performing judicial functions, including an officer such as a referee in bankruptcy, special master, court commissioner, or magistrate, is a judge for the purpose of this Code. All judges should comply with this Code except as provided below.

A. **Part-time Judge.** A part-time judge is a judge who serves on a continuing or periodic basis, but is permitted by law to devote time to some other

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UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA, THIRD DIVISION

[Caption Omitted In Printing]

Selected Pages From Committee Appointed By The Supreme Court To Review Judicial Canons

Filed March 12, 1999

* * *

- gifts for weddings and other special occasions from relatives or friends as long as it is commensurate with the occasion; and

- loans, scholarships and fellowships on the same terms generally available to non-judges or other applicants (*Section 4D(5) and Commentary,* pp. 30-33);

■ Clarifies that judge may serve as fiduciary for estate, trust or person of a member of judge's family if service will not interfere with judicial duties and estate or trust will not likely be involved in adversary proceedings before the court on which the judge serves or one under its appellate jurisdiction (*Section 4E and Commentary,* pp. 33-34);

■ Creates exception to prohibition against judges practicing law that allows judges to, without compensation, give legal advice to, and draft or review legal documents for, a member of the judge's family, but may not act as advocate or negotiator or make an appearance as counsel (*Section 4G and Commentary,* p. 35);

■ Adds new requirement that retired judges who intend to serve in a part-time judicial capacity may not practice law while available for judicial assignment but may serve as arbitrator or mediator (*Section 4F, and Commentary to Section 4G,* pp. 34-35);

■ Adds new exception authorizing candidates for judicial office to respond to false information and personal attacks or attacks on the candidate's record (*Section 5A(3)(e); Commentary to Section 5A(1),* pp. 42, 39);

■ Replaces previous blanket prohibition against announcing views on disputed legal or political issues with prohibition against making statements that commit or appear to commit the candidate with respect to cases, controversies or issues that are likely to come before the court[6] (*Section 5A(3)(d)(i), (ii) and Commentary,* pp. 41-42);

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[6] Code provisions identical to the present Minnesota provision have been successfully challenged in three of cases as unconstitutionally vague and overbroad. *See American Civil Liberties Union, Inc. v. The Florida Bar,* F.Supp. 1094 (N.D. Fla. 1990); *J.C.J.D. v. R.J.C.R.,* 803 S.W.2d 953 (Ky. 1991); *Stetton v. Disciplinary of S.Ct. of Pa.,* 944 F.2d 137 (3rd Cir. 1991); *Beshear v. Butt,* 773 F.Supp. 1229 (E.D. Ark. 1991) *reversed procedural grounds* 966 F.2d 1458. Although one case upheld the provision, the court was forced to adopt a narrow construction (*Stetton, supra*), and in another case in which the narrow construction was expressly stated in the [illegible] the provision was again struck down as unconstitutionally vague and overbroad. *Buckley v. Illinois Judicial Inq[illegible] Board,* No. 92-3279 (7th Cir. 1993). Moreover, the ABA version has survived such a constitutional chall[illegible] *Ackerson v. Kentucky Jud. Ret. & Removal Com'n,* 776 F.Supp. 309 (W.D.Ky. 1991). The Committee felt the present Minnesota provision would clearly be challenged, and that the expense involved could be spared adopted a less restrictive approach.

The committee also recognized that disciplinary proceedings under the ABA provision might be more difficult. The Committee felt, however, that the ABA provision strikes an appropriate balarce between the difficulty of proceed[illegible] and the public's need for knowledge, and that a debate during a campaign regarding the propriety of candidates announcing

- Regulates all candidates for appointment to judicial office and judges seeking appointment to other governmental office by:
  - prohibiting solicitation or acceptance of funds, personally or by committee, to support the candidate;
  - permitting contact with appointing authorities and committees;
  - permitting the seeking of endorsements from organizations that regularly make recommendations for appointments to the office; and
  - permitting only non-judge candidates to retain office in a political organization, attend political gatherings, and pay ordinary assessments and contributions to a political organization (*Section 5B and Commentary,* pp. 42-43);
- Clarifies that all candidates for public judicial election may speak to gatherings on their own behalf, appear in media advertisements supporting their own candidacy, and distribute promotional campaign literature supporting their own candidacy (*Section 5C(1),* pp. 43-44);
- Establishes a new, one year limit for solicitation of contributions and public support prior to a judicial election (*Section 5C(2),* pp. 44-45); and

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their views may have greater public benefit than a disciplinary proceeding held long after the campaign has faded from the public eye. Campaign violations in non-judicial elections are invoked more often in finger pointing during the campaign than in litigation following the campaign. The Committee also felt that Minnesota could benefit from the experience of other states that have already adopted the ABA provision.

- Clarifies application of Code to referees and judicial officers and requires a new judge to comply immediately with all provisions except 4D(2), 4D(3) and 4E, which relate to certain fiduciary and business activities and which must be complied with as soon as reasonably possible but in any event within one year (*Application Section and Commentary,* pp. 47-51).

All of the above additions, clarifications and modifications are recommended for adoption by the Committee. Some clarifications, additions and modifications in the 1990 ABA Model Code were not adopted, and the Committee recommends that additional changes be made, including (section and page references are to the accompanying set of proposals):

- Retention of requirement that judges shall take or initiate "appropriate disciplinary measures" against a judge or lawyer for unprofessional conduct of which the judge "becomes aware" (*Minn. Section 3C(1),* p. 17). 1990 ABA Model Code mandates reporting of violations that raise a "substantial question" as to another judge's "fitness for office," when the judge has "actual knowledge" of such violations, and allows discretion to choose appropriate action when there is a "substantial likelihood" that less serious violations have occurred (*ABA Section 3D(1),* p. 17);

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UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA, THIRD DIVISION

[Caption Omitted In Printing]

Filed March 12, 1999

STANDARDS OF PROFESSIONAL RESPONSIBILITY

Adopted by the Supreme Court on March 29, 1972

Analysis

I. A Judge Should Uphold the Integrity and Independence of the Judiciary.

II. A Judge Should Perform the Duties of His Office Fairly and Diligently.
   - A. Adjudicative Responsibilities.
   - B. Administrative Responsibilities.
   - C. Disqualification.
   - D. Financial Interest.

III. A Judge May Engage in Activities for the Improvement of the Law, the Legal System, and the Administration of Justice.

IV. A Judge Should Regulate His Extra-Judicial Activities so as to Minimize Conflict with His Judicial Duties.
   - A. Avocational Activities.
   - B. Civic and Charitable Activities.
   - C. Financial Activities.
   - D. Fiduciary Relationships.
   - E. Arbitration.
   - F. Practice of Law.
   - G. Extra-Judicial Appointments.

V. A Judge Should Avoid Impropriety and the Appearance of Impropriety in All of his Activities.

VI. A Judge Should Regularly File Reports of Compensation Received for Quasi-Judicial and Extra-Judicial Activities.

VII. A Judge Should Not Engage in Political Activity Except to the Extent Necessary to Obtain or Retain Judicial Office Through an Elective Process.

VIII. Compliance with Standards of Judicial Responsibility.

Rule 1 PROFESSIONAL RESPONSIBILITY

I. A Judge Should Uphold the Integrity and Independence of the Judiciary

A judge should participate in establishing, maintaining, and enforcing, and should himself observe, high standards of judicial conduct so that the integrity and independence of the judiciary may be preserved.

II. A Judge Should Perform the Duties of His Office Fairly and Diligently

The judicial duties of a judge have priority over his other activities. His judicial duties include all the duties of his office prescribed by law. In performance of these duties, the following standards apply:

A. Adjudicative Responsibilities. A judge should be faithful to the law, and maintain his professional competence in it. He should be unswayed by partisan interests, public clamor, or fear of criticism. He should also:

1. Be patient, dignified, and courteous toward litigants, jurors, witnesses, lawyers, and others who appear before him, and require like conduct by his staff, court officials, and lawyers.

2. Maintain order and decorum in proceedings before him.

3. Accord to every person who is legally interested in a proceeding, or his lawyer on his behalf, full right to be heard according to law, and, except as authorized by law, neither solicit nor accept *ex parte* or other communications concerning the proceeding, or an impending proceeding.

4. Dispose promptly of the business of the court, and without being arbitrary, secure the cooperation of court officials, litigants, and lawyers to that end.

5. Refrain from making any extra-judicial public statement about a pending proceeding.

6. Prohibit broadcasting, televising, recording, or taking photographs in the courtroom and its environs during sessions of court or recesses between sessions, except that a judge may authorize:

(i) The use of electronic or photographic means for the presentation of evidence, for the perpetuation of a record for appellate review, or for other purposes of judicial administration;

(ii) The broadcasting, televising, recording, or photographing of investitive, ceremonial, or naturalization proceedings;

(iii) The photographic or electronic reproduction by recognized educational institutions of appropriate court proceedings for use exclusively in their curricula.

B. Administrative Responsibilities. A judge should diligently discharge his administrative responsibilities, should maintain professional competence in judicial administration, and should facilitate the performance of the administrative responsibilities of other judges and court officials. He should also:

1. Require his staff and subordinate court officials to observe the standards of fidelity and diligence that apply to him;

2. Correct or report to an appropriate disciplinary body serious misconduct by lawyers of which he may become aware;

3. Exercise his power of appointment on the basis of merit, and confine compensation and reimbursement of appointees within the limits of law and in accordance with the fair value of services rendered.

C. Disqualification. A judge should disqualify himself in any proceeding in which his impartiality might reasonably be questioned, including but not limited to instances where:

1. He has a fixed belief concerning the merits of the matter before him, or personal knowledge of evidentiary facts concerning it;

2. He has previously served as a lawyer in the matter in controversy, or has been a material witness concerning it;

3. He or his spouse is within the (third) degree of relationship to a person, or the spouse of a person, who:

(a) Is a party to the proceeding or an officer or director of a party;

(b) Is acting as a lawyer in the proceeding;

(c) Is known by the judge to have a substantial interest in the matter in controversy or the affairs of a party to the proceeding;

(d) Is to the judge's knowledge likely to be a material witness in the proceeding.

4. He knows that he, individually or as a fiduciary, or any member of his immediate family, or any member of his family residing in his household, has a financial interest:

(i) in the subject matter in controversy,

(ii) in a party to the proceeding, or

(iii) that could be substantially affected by the outcome of the proceeding.

A judge should make reasonable effort to inform himself about his personal and fiduciary financial interests and those of the members of his family residing in his household. For the purposes of this subsection:

A. "Fiduciary" means executor, administrator, trustee, guardian, and the like.

B. "Member of his immediate family" means spouse, child, grandchild, parent, or a person standing in fact or in law in such relationship.

C. "Member of his family residing in his household" means any relative by blood or marriage, or a person treated in fact as a relative, who resides in the judge's household.

D. **"Financial interest"** includes any legal or equitable economic interest, however small, and any relationship as director, advisor, or other active participant, except that:

(i) ownership in a mutual or common investment fund that holds securities is not a "financial interest" in such securities.

(ii) a fiduciary office in an educational, religious, charitable, fraternal, or civic organization is not a "financial interest" in securities held by the organization.

(iii) the proprietary interest of a policyholder in a mutual insurance company, or of a depositor in a savings association, or a similar interest in a like organization, is a "financial interest" in the organization only if the outcome of the proceeding could substantially affect the value of the interest.

(iv) ownership of government bonds is a "financial interest" in the issuer only if the outcome of the proceeding could substantially affect the value of the bonds.

A judge disqualified by the terms of subdivision C(3), or by subdivision C(4) but whose interest is insubstantial, may if he chooses to do so disclose fully and in writing the basis of his disqualification to an appropriate court officer, who shall transmit a copy of the statement to each party and his lawyer, if any. If the parties and lawyers all agree in writing to remit the judge's disqualification, the agreement shall be filed with such officer, and the judge may participate in the proceeding. The judge's statement and the agreement signed by all parties and lawyers shall be incorporated in the record of the proceeding.

III. A Judge May Engage in Activities for the Improvement of the Law, the Legal System, and the Administration of Justice

Subject to the proper performance of his judicial duties, a judge may engage in the following quasi-judicial activities, if in doing so he does not cast doubt on his capacity to decide impartially issues that may come before him:

A. He may speak, write, lecture, teach, and participate in other activities concerning the law, the legal system, and the administration of justice.

B. He may serve as a member, officer, or director of an organization devoted to the improvement of the law, the legal system, and the administration of justice. He may endorse the efforts of such an organization to raise funds, and may participate in their management and investment.

C. He may consult with and appear before executive or legislative bodies and officials only on matters of judicial administration.

IV. A Judge Should Regulate His Extra-Judicial Activities so as to Minimize Conflict with His Judicial Duties

A. Advocational Activities. A judge may write, lecture, teach, and speak on non-legal subjects, and engage in the arts, sports and other social and recreational activities, if they do not detract from the dignity of his office or interfere with his judicial duties.

B. Civic and Charitable Activities. A judge may participate in civic and charitable activities that do not

reflect adversely upon his impartiality or interfere with his judicial duties. A judge may serve as an officer, director, trustee, or non-legal advisor of an educational, religious, charitable, fraternal, or civic organization not conducted for the economic or political advantage of its members, subject to the following limitations:

1. He should not serve if it is likely that the organization will be engaged in proceedings that would ordinarily come before him or that it will be regularly engaged in adversary proceedings in any court.

2. He should not solicit funds or other assistance for any educational, religious, charitable, fraternal, or civic organization, or use the prestige of his office for that purpose, but a judge may be listed as an officer or director of such an organization.

C. Financial Activities. A judge should observe the following restrictions concerning his financial activities:

1. He should not serve as officer, director, employee, or advisor of any business organization, nor should he take an active role in the management of any business.

2. He should refrain from financial and business dealings that tend to reflect adversely upon his impartiality or integrity, or that interfere with the proper performance of his judicial duties. Subject to this requirement, he may own a farm, ranch, or other property and engage in activities ordinarily incident to ownership of such property.

3. He should manage his investments and other financial interests so as to minimize the number of cases in which he is disqualified. He should divest himself as soon as possible without serious financial

loss of all investments and other financial interests that might require frequent disqualification.

4. Except as provided in this subsection, neither a judge nor the members of his immediate family should accept gifts, favors, or loans from a lawyer, party, or others whose interests are likely to come before him. A judge should not accept a gift, bequest, or favor from any other source of a value exceeding $100 unless it is from a member of his family or he reports it in the same manner as a receipt of compensation for non-judicial activities. Ordinary social hospitality shall not be considered a gift.

A judge is not required to report the acceptance of:

(i) a loan by a lending institution in its regular course of business on the same terms available to persons who are not judges;

(ii) law books supplied by publishers on a complimentary basis for official use;

(iii) a scholarship or fellowship awarded to a member of his family on the same terms applied to other applicants.

5. Except as provided in this Rule and Rules II and VI, a judge is not required to disclose his income, debts, or investments.

6. Confidential information acquired by a judge in his judicial capacity should not be used or disclosed by him in financial dealings or for any other purpose not related to his judicial duties.

D. Fiduciary Relationships. A judge should not serve as an executor, administrator, trustee, guardian, or

other fiduciary, except for the estate, trust, or person of a member of his family, and then only if such service will not interfere with his judicial duties. As a family fiduciary he is subject to the following limitations:

1. He should not serve if it is likely that as a fiduciary he will be engaged in proceedings that would ordinarily come before him, or if the estate, trust, or ward becomes involved in adversary proceedings, in the court on which he serves or one under its appellate jurisdiction.

2. While acting as a fiduciary a judge is subject to the same restrictions on financial activities that apply to him in his personal capacity.

E. Arbitration. A judge should not act as an arbitrator.

F. Practice of Law. A judge should not practice law.

G. Extra-Judicial Appointments. A judge should not accept appointment to a governmental committee or commission that is charged with resolving issues of fact or policy on matters other than the improvement of the law, the legal system, or the administration of justice. A judge may represent his country, state, or locality on ceremonial occasions and in connection with educational and cultural activities.

V. A Judge Should Avoid Impropriety and the Appearance of Impropriety in All of his Activities

A judge should show respect for and comply with the law and should conduct himself at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary.

A judge should not allow his family, social, or business relations or friendships to influence his judicial conduct or judgment. He should not knowingly permit others to convey the impression that they have special influence with him, or lend the prestige of his office to advance a private business interest. He should not testify as a character witness.

VI. A judge Should Regularly File Reports of Compensation Received for Quasi-Judicial and Extra-Judicial Activities

A judge may receive compensation and reimbursement of expenses for the quasi-judicial and extra-judicial activities permitted by these Rules if such payments are from a source that does not give the appearance of influencing the judge in his judicial duties or otherwise give the appearance of impropriety, subject to the following limitations:

A. Compensation should not exceed a reasonable amount, and should be no more than a person who is not a judge would receive for the same activity.

B. Expense reimbursement should be limited to the actual cost of travel, food, and lodging expenses reasonably incurred by the judge and, where appropriate to the occasion, by his spouse. Any payment in excess of such an amount constitutes compensation.

C. He should report the date, place, and nature of any activity for which he receives compensation, and the name of the payor and the amount of any sum so received. His report should be made at least annually and should be filed as a public document with the clerk of the court on which he serves or in such other place as is designated by rule of court.

VII. A Judge Should Not Engage in Political Activity Except to the Extent Necessary to Obtain or Retain Judicial Office Through an Elective Process

A judge or candidate for elective judicial office should not solicit funds for, or pay an assessment or make a contribution to, a political organization or candidate except as authorized below; he should not act as a leader or hold any office in a political organization; he should not make speeches for a political organization or candidate or publicly endorse any candidate for non-judicial public office; and he should not engage in any other political activities except on behalf of measures to improve the administration of justice.

A. A judge should resign his office when he becomes a candidate either in a party primary or in a general election for any non-judicial office.

B. During the campaign period for judicial office filled by an elective process, a candidate may attend political gatherings and speak on behalf of his own candidacy, and where permitted by law he may pay an assessment or make a contribution to his party or organization.

C. A candidate should make no pledges or promises of conduct in office other than the faithful and impartial performance of the judicial duties of the office; he should not announce his views on disputed legal or political

issues; and he should not misrepresent his identity, qualifications, present position, or other fact.

D. He should not knowingly allow his secretary, clerk, bailiff, or other court personnel to do for him what he is prohibited from doing under this Rule; and except to the extent authorized under subsection E below, he should not knowingly allow any other person to do for him what he is prohibited from doing under this Rule.

E. A candidate for elective judicial office should not himself solicit or accept campaign funds, or solicit publicly stated support, but he may establish committees of responsible persons to secure funds for his campaign and publicly stated support for his candidacy. A candidates' committees may solicit funds for his campaign no earlier than (180) days before primary election and no later than (180) days after the last election in which he participates during the election year. The committees are not prohibited from soliciting campaign contributions and public support from lawyers.

F. A candidate for elective judicial office should maintain the dignity appropriate to judicial office. The spouse of a candidate for judicial office should adhere to the same standards of political conduct that apply to the candidate.

VIII. Compliance with Standards of Judicial Responsibility

A. For the purpose of these Rules, a "judge" is an officer of the judicial system who performs judicial

functions, whether or not a lawyer. All judges should comply with these Rules except that:

1. A part-time judge:

(a) Is not required to comply with Rule IVC(1), D, E, F, and G; and Rule VIC;

(b) Should not practice law in the court on which he serves or in any court subject to the appellate jurisdiction of the court on which he serves, nor act as a lawyer in a proceeding in which he has acted as a judge or in any other proceeding related thereto.

2. A retired judge who receives compensation and is eligible for recall to judicial service should comply with all provisions of these rules.

B. A person to whom these standards become applicable should as soon as reasonably possible arrange his affairs to comply with them. A person who holds judicial office may, if the demands on his time and the possibility of conflicts of interest are not substantial, nevertheless:

1. Continue to act as an executor, administrator, trustee, or other fiduciary for the estate or person of one who is not a member of his family;

2. Continue to act as an officer, director, or nonlegal advisor of a family business if he was acting in that capacity at the time he became a judge.

C. A judge who violates any of the preceding rules shall be subject to discipline by the Minnesota Commission on Judicial Standards. Supreme court and district court judges are subject to discipline by the Minnesota

Commission on Judicial Standards only to the extent permitted by the Constitution of Minnesota.

Office of the Clerk
Supreme Court of the United States
Washington, D.C. 20543-0001

December 3, 2001

James Bopp, Esq.
Bopp, Coleson & Bostrom
1 South 6th Street
Terre Haute, IN 47807-3510

Re: 01-521 – Republican Party of Minnesota v. Kelly

Dear Mr. Bopp:

The Court today entered the following order in the above stated case:

> "The petition for a writ of certiorari is granted limited to Question 1 presented by the petition."

The following items are enclosed: Memoranda describing the procedures under the Rules, a Specification Chart, Guide for Counsel, Memoranda to Brief Printing Companies, and Counsel of Record Information Form. Inasmuch as this case will be argued in the **March Session**, please note that requests for extensions of time are not favored.

If you have any question, please telephone me.

Sincerely,

WILLIAM K. SUTER, CLERK

/s/ Denise J. McNerney
Denise J. McNerney
Merits Cases Clerk
(202) 479-3032

Enclosures